85-1484

No. 85-

Supreme Court, U.S.
FILED
MAR 7 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

OWEN STEEL COMPANY, INC., OWEN SUPPLY COMPANY, INC., OWEN ELECTRIC STEEL COMPANY OF SOUTH CAROLINA, OWEN INDUSTRIAL PRODUCTS, INC., OWEN JOIST CORPORATION, OWEN MISCELLANEOUS METALS, INC. AND SOUTH CAROLINA STEEL CORPORATION,

Petitioners,

vs.

SOUTH CAROLINA TAX COMMISSION, JOHN T. WEEKS AS CHAIRMAN, CHARLES N. PLOWDEN AND S. HUNTER HOWARD, JR., AS COMMISSIONERS, AND CONSTITUTING THE SOUTH CAROLINA TAX COMMISSION; AND SOUTH CAROLINA TAX BOARD OF REVIEW, JOHN W. FOSTER, AS CHAIRMAN, ISADORE BOGOSLOW, MARGARET R. DIGGS, VANCE B. DRAWDY, PAUL HEMPHILL, JOHN C. B. SMITH AND RONNIE L. SMITH AS MEMBERS, AND CONSTITUTING THE SOUTH CAROLINA TAX BOARD OF REVIEW,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

TERRELL L. GLENN
*THEODORE J. HOPKINS, JR.
ROBERT E. STEPP
MCNAIR GLENN KONDUROS CORLEY
SINGLETARY PORTER & DIBBLE, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Counsel of Record

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

QUESTION PRESENTED FOR REVIEW

For Purposes Of *Ad Valorem* Taxation, Does The Fourteenth Amendment To The United States Constitution Prohibit Discrimination That Results From A Wide Disparity Of Appraisals Between Classes Of Property (Certain Classes Are Appraised At Fair Market Value While Other Classes Representing An Enormous Amount Of Property Are Appraised At Less Than Half Of Fair Market Value) Where:

a. State Law For More Than 100 Years Has Mandated That All Property Shall Be Appraised At Fair Market Value, And

b. The Disparity Is A Direct Result Of Long-standing, Systematic And Intentional Action Of The Assessing Authority?

LIST OF PARTIES TO THIS PROCEEDING

1. The petitioners are Owen Steel Company, Inc., Owen Supply Company, Inc., Owen Electric Steel Company of South Carolina, Owen Industrial Products, Inc., Owen Joist Corporation, Owen Miscellaneous Metals, Inc. and South Carolina Steel Corporation (collectively referred to herein as the "petitioners" or "companies").

2. The respondents are the South Carolina Tax Commission, John T. Weeks as Chairman, Charles N. Plowden and S. Hunter Howard, Jr., as Commissioners, and constituting the South Carolina Tax Commission; and the South Carolina Tax Board of Review, John W. Foster, as Chairman, Isadore Bogoslow, Margaret R. Diggs, Vance B. Drawdy, Paul Hemphill, John C. B. Smith and Ronnie L. Smith as Members, and constituting the South Carolina Tax Board of Review.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
LIST OF PARTIES TO THIS PROCEEDING	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	4
REASONS FOR THE ALLOWANCE OF THE WRIT	9
CONCLUSION	20
APPENDIX	1a

TABLE OF AUTHORITIES

A. CASES: Page

Broad River Power Co. v. South Carolina, 281 U.S. 537, 50 S.Ct. 401, 74 L.Ed. 1023 (1930) 10

Chicago, Burlington, and Quincy Railway Co. v. Illinois, 200 U.S. 561, 26 S.Ct. 341, 50 L.Ed. 596 (1906) 10

Cummings v. Merchants' National Bank, 101 U.S. 153, 25 L.Ed. 903 (1880) 10, 14

Greene v. Louisville & Interurban Railroad, 244 U.S. 499, 37 S.Ct. 673, 61 L.Ed. 1280 (1917) 9, 14

Lancaster County v. South Carolina Tax Commission, No. 82-780 (S.C. Sup. Ct., dismissed, Sept. 27, 1983) 19

Lawrence v. State Tax Commission, 286 U.S. 276, 52 S.Ct. 556, 76 L.Ed. 1102 (1932) 10

Louisville & Nashville Railway v. Public Service Commission of Tennessee, 249 F. Supp. 894 (M.D. Tenn. 1966), *aff'd*, 389 F.2d 247 (6th Cir. 1968) 10

Louisville & Nashville Railway v. Public Service Commission of Tennessee, 493 F.Supp. 162 (M.D. Tenn. 1978), *aff'd*, 631 F.2d 426 (6th Cir. 1980), *cert. den.*, 450 U.S. 959, 101 S.Ct. 1418 (1981) 10

McWhirter v. Bridges, 249 S.C. 613, 155 S.E.2d 897 (1967) 18

Meredith v. Elliott, 247 S.C. 335, 147 S.E.2d 244 (1966) 19

Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983) ..... *passim*

Moffett v. Traxler, 247 S.C. 298, 147 S.E.2d 255 (1966) 18

Norfolk & Western Railway v. Missouri State Tax Commission, 390 U.S. 317, 88 S.Ct. 995, 19 L.Ed.2d 1201 (1968) 9

Table of Authorities Continued

Page

Raymond v. Chicago Union Traction Co., 207 U.S. 20, 28 S.Ct. 7, 52 L.Ed. 78 (1907) 10

Sioux City Bridge Co. v. Dakota County, Nebraska, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923) 9, 14, 15

Sunday Lake Iron Co. v. Wakefield, 247 U.S. 350, 38 S.Ct. 495, 62 L.Ed. 1154 (1918) 9, 15

Township of Hillsborough, Somerset County, N.J. v. Cromwell, 326 U.S. 620, 66 S.Ct. 445, 90 L.Ed. 358 (1946) 9

Wasson v. Mayes, 252 S.C. 497, 167 S.E.2d 304 (1969) 19

B. Constitutional Provisions

United States
14th Amendment 2, 5, 9, 20

South Carolina Constitution of 1865
Article I, Section 8 18

South Carolina Constitution of 1868
Article II, Section 3 18

South Carolina Constitution of 1895
Article III, Section 29 ..... 2, 17, 18
Article X, Section 1 2
Article X, Section 2 3
Article XVI, Section 1 ..... 3, 17, 18

C. Statutes and Regulations

United States Code
Title 28, Section 1257(c) 2

Code of Laws of South Carolina, 1976
Section 12-37-930 ..... 3, 17, 18
Section 12-43-210 3

Statutes at Large of South Carolina
Act 2094 of 1815, 6 Statute 19, Section 11 . 18

Table of Authorities Continued

	Page
Act 22 of 1868, Statute 37, Section 48	18
South Carolina Property Tax Regulation 117-115	3, 4, 17
D. MISCELLANEOUS AUTHORITIES	
Cheale, *Proverbial Folklore* (1875)	8, 20

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-

OWEN STEEL COMPANY, INC., OWEN SUPPLY COMPANY, INC., OWEN ELECTRIC STEEL COMPANY OF SOUTH CAROLINA, OWEN INDUSTRIAL PRODUCTS, INC., OWEN JOIST CORPORATION, OWEN MISCELLANEOUS METALS, INC. AND SOUTH CAROLINA STEEL CORPORATION,
Petitioners,

vs.

SOUTH CAROLINA TAX COMMISSION, JOHN T. WEEKS AS CHAIRMAN, CHARLES N. PLOWDEN AND S. HUNTER HOWARD, JR., AS COMMISSIONERS, AND CONSTITUTING THE SOUTH CAROLINA TAX COMMISSION; AND SOUTH CAROLINA TAX BOARD OF REVIEW, JOHN W. FOSTER, AS CHAIRMAN, ISADORE BOGOSLOW, MARGARET R. DIGGS, VANCE B. DRAWDY, PAUL HEMPHILL, JOHN C. B. SMITH AND RONNIE L. SMITH AS MEMBERS, AND CONSTITUTING THE SOUTH CAROLINA TAX BOARD OF REVIEW,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

OPINIONS BELOW

The opinion of the Supreme Court of South Carolina (reprinted in Appendix A) is reported at __ S.C. __, 337 S.E.2d 880 (1985). The opinion of the Circuit Court for the Fifth Judicial Circuit, dated August 23, 1983 is the same adopted as the opinion of the Supreme Court of South Carolina. The opinion of the Circuit Court is not officially reported.

JURISDICTION

The judgement of the Supreme Court of South Carolina which is sought to be reviewed (reprinted in Appendix A) was entered on October 25, 1985. A timely Petition for Rehearing (reprinted in Appendix B) was denied on December 10, 1985, and this petition for writ of certiorari was filed within ninety (90) days of that date.

Jurisdiction of this Court is invoked under 28 U.S.C. §1257(3). In this case petitioners claim the right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Federal constitutional and statutory provisions involved in this case [United States Constitution, Amendment XIV; and 28 U.S.C. §1257(3)] are set out in full in Appendix C, p. 13a.

The State constitutional and statutory provisions involved in this case are set out in full in Appendix D, p. 15a. The relevant aspects thereof are presented here.

South Carolina Constitution of 1895, Article III, Section 29, provides for one class—all property—and one standard—actual/fair market value—for purposes of *valuation* or determining appraised value.

South Carolina Constitution of 1895, Article X, Section 1 (as amended, 1977) provides for eight (8) clas-

sifications of property for purposes of *assessment* or determining assessed value as a percentage of fair market value.

South Carolina Constitution of 1895, Article X, Section 2(c) (as amended, 1977) provides:

> Statutes pertaining to the method of assessment of property for *ad valorem* taxation not in conflict with this article shall continue in force until changed by an act of the General Assembly.

South Carolina Constitution of 1895, Article XVI, provides the only method by which the South Carolina Constitution may be amended.

Section 12-37-930, Code of Laws of South Carolina (1976), as amended provides for one class of property—all property—for purposes of *valuation* or determining appraised value.

Section 12-43-210, Code of Laws of South Carolina (1976), as amended, provides for uniform and equitable assessment of all property throughout the state and for regulations to ensure such equalization.

South Carolina Property Tax Regulation 117-115 provides in pertinent part:

> Section 1: . . .[T]he South Carolina Tax Commission shall annually make a ratio study of all the counties in the state to determine if the level of appraisal . . . and the degree of equity has been achieved as required by law. . . . *If a county has a median appraisal for all property as a whole or any class* higher than 105% or *lower than 80% of fair market value it shall be deemed unacceptable by the*

South Carolina Tax Commission. . . . [Emphasis supplied.]

Section 2: Average Appraisal. The median shall be the criteria [sic] to determine the level of appraisal or assessment for all property as a whole or for any class . . . .

STATEMENT OF THE CASE

The companies are manufacturers, the principal places of business of which are located in three counties (Richland, Lexington and Greenville) in South Carolina. The companies protested the South Carolina Tax Commission's (referred to herein as the "Tax Commission" or "Commission") proposed appraisal or valuation of their respective properties in the three counties for tax year 1981, because their property had been appraised year after year at full fair market value while other classes of property had been systematically appraised at less than half of fair market value. (See Appendix E, p. 22a, for diagrammatic summary of taxation of manufacturers in South Carolina.) They asked the Tax Commission to reduce/equalize the proposed values of their property to reflect the same proportion or percentage of fair market value as real property locally assessed by the respective counties. The principal legal theory relied upon by the companies from the outset and for the duration of this case was and is that the enormous disparity of appraisal/valuation between property classifications resulting from long-standing, admittedly systematic and intentional action of the assessing authority constitutes discrimination and violation of the companies' rights to due process and/or equal pro-

tection of the laws under the Fourteenth Amendment to the United States Constitution.

A consolidated hearing of the appeals was held before the Tax Commission on November 3, 1981, and an extensive record was developed which provides abundant, uncontroverted evidence as to facts material to the consideration of the questions presented to this Court, including the following:

(1) A wide disparity of appraisals between classes of property in the same taxing district (county) resulted from long-standing, admittedly systematic and intentional undervaluation of certain classes by the county assessor, while other classes, including that of the companies, were being systematically and intentionally appraised by the Commission at full fair market value.[1]

(2) The classes appraised by the county assessors were appraised for tax year 1981 at 45%, 41% and 69% of fair market value respectively in the three counties, and these appraisals were grossly below the minimum percentage (80%) of fair market value required by law. The classes of property so grossly undervalued by the county assessors represented an enormous amount of property: almost *half* (i.e. approximately 49% and 48%) of the respective total assessed value of two counties and more than one third (i.e. approximately 36%) of the total assessed value of the third county.

(3) The assessing authority acknowledged its long-standing failure over a period of *sixty-six* years to

---

[1] See Appendix F, p. 23a, for discussion of the admittedly systematic and intentional action of the assessing authority (Tax Commission and respective county assessors).

provide equality and uniformity in property taxation,[2] and agreed that the disparity was constitutionally and statutorily prohibited, not only for the tax year in question (1981) but for the *prior* tax year as well.[3]

---

[2] When the history of uniformity and equality in *ad valorem* taxation in South Carolina was being addressed during the hearing before the Tax Commission, the Chairman of the Commission recognized sixty-six years of non-compliance:

> *Mr. Wasson*: The Tax Commission was organized in 1915 for the purpose of equalizing property, and we plan to get it done next year. *Laughter*
> S. C. Sup. Ct. Tr. 26.

[3] At the end of the hearing, when the Chairman was questioned as to the failure of the assessing authority to comply with constitutional and statutory law, the following dialogue clearly revealed the assessing authority's opinion as to the tax year in question (1981) and the prior year as well:

> *Mr. Hopkins*: Mr. Chairman, based on that observation, is a correct interpretation of the language in that letter that inequality established by the sales ratio study for the tax year 1980 was, in fact, constitutionally and statutorily prohibited in tax year 1980, recognizing that we used the words that this inequality is constitutionally and statutorily prohibited?
>
> *Mr. Wasson* [*Chairman, South Carolina Tax Commission*]: We felt they [the counties] were not abiding by the law.
>
> *Mr. Hopkins*: For tax year 1980?
>
> *Mr. Wasson*: Yes.
>
> *Mr. Hopkins*: If such inequality was by your statement constitutionally and statutorily prohibited for tax year 1980 and recognizing that our constitutional and statutory laws have not changed or deviated insofar as concerns tax year 1981, it is reasonable to conclude that such taxation, such inequality, is constitutionally and statutorily prohibited for tax year 1981 in those counties that have not complied with

Notwithstanding the abundant, uncontroverted evidence establishing the wide disparity and discrimination in appraisals, on November 16, 1981 the Commission issued its finding, denying all relief sought by the companies and stating that the companies' properties were "taxed as equitably and uniformly as possible." (S. C. Sup. Ct. Tr. 176.) In the finding, the Commission cited only one state constitutional provision and one state statute. It referenced no cases or source materials whatsoever.

Thereafter, the companies collectively and timely filed their consolidated appeal to the South Carolina Tax Board of Review. The companies prayed that the Board grant the relief requested in their protests to the Commission on the ground that the disparity was and is constitutionally and statutorily prohibited. Citing no constitutional or substantive statutory law and no cases or source materials whatsoever, the Board entered its order on December 17, 1982, sustaining the Commission's finding and denying the companies their contended relief.

Thereafter, the companies collectively and timely filed their consolidated petition in the Circuit Court for the Fifth Judicial Circuit of South Carolina. The companies prayed that the circuit court reverse the decision of the Tax Board of Review on the ground that the disparity of appraisals was and is constitutionally and statutorily prohibited. On August 23, 1983, Judge Walter J. Bristow, Jr., issued the order of the circuit court affirming the decision of the Tax

---

Regulation 117-115?

Mr. Wasson: Yes, I think they're still in violation.
S. C. Sup. Ct. Tr. 157-158.

Board of Review and dismissing the petition. (See Appendix A.)

Referring to the quotation in Cheale, *Proverbial Folklore* (1875) that "two wrongs do not make one right," the circuit court concluded that it is constitutionally and statutorily permissible to tax certain classes of property (those assessed by the Commission, including property of the companies) based on a valuation that is a reasonable approximation of fair market value while other classes of property (those assessed by the counties) are taxed based on a valuation that may be subtantially less that fair market value.[4] (See Appendix A, p. 5a.) Not a single state case is cited in the circuit court opinion. All references therein are to federal cases. (See Appendix A, pp. 6a and 7a.)

The companies collectively and timely appealed to the Supreme Court of South Carolina which, in turn, affirmed the order of the lower court and adopted same in its entirety.

---

[4] In reaching its conclusion, the circuit court reasoned as follows:
(1) That property in six out of eight classifications had been appraised at fair market value, whereas property in the remaining two classifications had been appraised in the three counties respectively at 40.8%, 45% and 69.2% of fair market value; that the grossly undervalued property represented a *minority*, rather than a majority, of the total assessed value of the property in the counties; and that to grant the companies' request "would further compound the inequity";
(2) That the method of equalization/reduction propounded by the companies was not altogether acceptable; and
(3) That there was no systematic and intentional undervaluation and no intentional violation of the companies' rights by the assessing authority.

REASONS FOR THE ALLOWANCE OF THE WRIT

The Federal (14th Amendment) Question Was Properly Framed And Presented To All Administrative And Judicial Bodies; The State Court Judgement Is Interwoven With Federal Law; And The Adequacy And Independence Of Any Possible State Law Grounds Is Not Clear From The Face Of The Opinion.

From the outset of this case in 1981, the companies specially set up the claim of federal right, to wit: that the disparity of appraisals is discriminatory and constitutionally prohibited under the 14th Amendment. It is undisputed that the claim of federal right was properly framed, presented to and considered by the South Carolina Tax Commission, South Carolina Tax Board of Review, Circuit Court for the Fifth Judicial Circuit and Supreme Court of South Carolina; and the 14th Amendment claim went to the very root of the case and dominated every part of it as it progressed through the four administrative and judicial tribunals. Indeed, the transcript of the original hearing before the Tax Commission, the pleadings, the briefs of opposing parties and the oral arguments were replete with citations to the 14th Amendment and/or federal cases bearing thereon.[5] Although federal law

---

[5] *See*, e.g., *Norfolk & Western Railway v. Missouri State Tax Commission*, 390 U.S. 317, 88 S.Ct. 995, 19 L.Ed.2d 1201 (1968); *Township of Hillsborough, Somerset County, N. J. v. Cromwell*, 326 U.S. 620, 66 S.Ct. 445, 90 L.Ed. 358 (1946); *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923); *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 38 S.Ct. 495, 62 L.Ed. 1154 (1918); *Greene v. Louisville & Interurban Railroad*, 244 U.S. 499, 37 S.Ct. 673,

has been interwoven throughout and has been pervasive for the duration of the case, the judgement of the state court was that the decision of the Commission was not in violation of "constitutional provisions." The state court did not specify whether it meant federal or state constitutional provisions. In view of the state court judgement, the companies now seek to vindicate their 14th Amendment rights before this Court.

When claim of a federal right or immunity specially set up from the outset goes to the very root of the case, this Court has held that it will re-examine the final judgement of the state court insofar as it involves the federal right specially set up.[6] Recently, in

---

61 L.Ed. 1280 (1917); *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20, 28 S.Ct. 7, 52 L.Ed. 78 (1907); *Cummings v. Merchants' National Bank*, 101 U.S. 153, 25 L.Ed. 903 (1880); *Louisville & Nashville Railway v. Public Service Commission of Tennessee*, 493 F. Supp. 162 (M.D. Tenn. 1978), *aff'd*, 631 F.2d 426 (6th Cir. 1980), *cert. denied*, 450 U.S. 959, 101 S.Ct. 1418 (1981); *Louisville & Nashville Railway v. Public Service Commission of Tennessee*, 249 F. Supp. 894 (M.D. Tenn. 1966), *aff'd*, 389 F.2d 247 (6th Cir. 1968).

In addition to the federal cases, the companies cited decisions of state courts of last resort, many of which relied on the 14th Amendment and federal cases. (See Appendix I, p. 30a, for a list of some of these cases as well as decisions of courts of last resort of other states—all of which support the companies' 14th Amendment argument.)

[6] *See*, e.g., *Michigan v. Long*, 463 U.S. 1032, 1068, 103 S.Ct. 3469, 3490, 77 L.Ed.2d 1201, 1233 (1983) (STEVENS, J., dissenting); *Lawrence v. State Tax Commission*, 286 U.S. 276, 282, 52 S.Ct. 556, 558, 76 L.Ed. 1102, 1106 (1932); *Broad River Power Co. v. South Carolina*, 281 U.S. 537, 50 S.Ct. 401, 74 L.Ed. 1023 (1930); and *Chicago, Burlington, and Quincy Railway Co. v. Illinois*, 200 U.S. 561, 580, 26 S.Ct. 341, 345, 50 L.Ed.

Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983), this Court recognized the need for doctrinal consistency in addressing the various methods of disposition of this jurisdictional issue. In view of the primary role of this Court to make sure that persons who seek to vindicate federal rights have been fairly heard, the companies respectfully request the Court to apply the foregoing decisions, including the method recognized in *Long* as to the determination of jurisdiction, in deciding whether the Court will undertake to review the decision of the Supreme Court of South Carolina.

Michigan v. Long: The Doctrine

The Court's decision in *Long* is the most recent comprehensive opinion as to reasons why this Court may or may not lack jurisdiction to review the final judgement of a state's highest court. The Court addressed the State of Michigan's petition requesting review of the decision of the Michigan Supreme Court upholding a citizen's assertion of a federal (4th Amendment) right. The Court undertook an extensive review of the various principles announced in prior cases and, after concluding that there was substantial need for doctrinal consistency insofar as concerns the treatment of jurisdiction, granted review of the state court decision and held as follows:

> (A) In determining whether state court references to state law constitute adequate and independent state grounds, the Court will no longer look beyond the opinion

---

596, 604 (1906). (See Appendix J, p. 31a, for discussion of these cases.)

under review, or require state courts to reconsider cases to clarify the grounds of their decisions;

(B) When a state court decision fairly appears to rest primarily on federal law, or to be interwoven with federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, the Court will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so; and

(C) If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent state grounds, the Court will not undertake to review the decision.

Michigan v. Long, 463 U.S. at 1040, 1041, 103 S. Ct. at 3471, 77 L.Ed.2d at 1214 (1983).

In so holding, the Court emphasized that:

(1) The state court relied exclusively on its understanding of federal cases other than two citations to the state constitution;

(2) Not a single state case was cited to support the state court's holding; and

(3) There was no plain statement by the state court that its decision rested on adequate and independent state grounds.

Before discussing in detail the application of the doctrine in *Long* to this case, the Court's attention

is invited to the striking analogy of the facts and circumstances in this case with respect to the three points emphasized in *Long*:

(1) Here the state court relies exclusively on its understanding of federal cases other than a few citations to state law;

(2) Here not a single state case is cited to support the state court's holding; and

(3) Here there is no plain statement by the state court that its decision rests on adequate and independent state grounds.

The Doctrine Applied

At the beginning, it is appropriate to recognize that, in contrast to the situation in *Long* where the petitioner was the state seeking to reverse the state court's decision *upholding* a citizen's constitutional rights, the companies herein seek to *vindicate* their constitutional rights. They respectfully submit that the facts and circumstances herein bring this case within the Court's scope of review, particularly in view of the Court's "primary role. . . to make sure that persons who seek to vindicate federal rights have been fairly heard." *Id.*, 463 U.S. at 1068, 103 S.Ct. at 3490, 77 L.Ed. 2d at 1233 (STEVENS, J., dissenting). With the foregoing in mind, the companies invite the Court's attention to the opinion of the Supreme Court of South Carolina.[7]

---

[7] It should be borne in mind that the Supreme Court of South Carolina simply adopted, verbatim, the opinion of the Circuit Court for the Fifth Judicial Circuit, which in turn affirmed the order of the South Carolina Tax Board of Review sustaining the

(1) Interwoven Federal Law

As stated earlier, the transcript of the original hearing before the Commission, the pleadings, the briefs of the opposing parties and the oral arguments were all replete with references to the 14th Amendment and federal cases bearing thereon. See n. 5, *supra*. Indeed, the only cases cited in the state court opinion are decisions of this Court: *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923); *Greene v. Louisville & Interurban Railroad*, 244 U.S. 499, 37 S.Ct. 673, 61 L.Ed. 1280 (1917); and *Cummings v. Merchants' Nat. Bank*, 101 U.S. 153, 25 L.Ed. 903 (1880). None of these cases are specifically adopted, distinguished or rejected in the state court opinion.[8] The continuing dialogue between the parties as to federal law and federal rights during the four years of review by state administrative and judicial bodies provides ample reason to conclude that the state court had to be addressing federal constitutional provisions when it recognized in its opinion the companies' allegations

---

finding of the South Carolina Tax Commission. The Tax Board of Review cited no authority whatsoever as a basis for sustaining the Commission; and the Commission cited no cases or source materials whatsoever in reaching its decision.

[8] Indeed, the opinion of the circuit court which was simply adopted by the Supreme Court of South Carolina referred to *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923) as only "respectable," not controlling, authority for the proposition that the only constitutionally correct way to cure unequal assessments is to lower the assessments of the taxpayers who have been discriminated against. The state court's cavalier treatment of this Court's opinion in *Sioux City Bridge Co.* is the basis underlying the erroneous decision below.

that the Commission has violated "constitutional provisions." (See Appendix A, p. 4a.)

The state court, moreover, has made no plain statement that, in its judgement or opinion, the federal cases considered and cited are being used only for the purpose of guidance and do not themselves compel the result that the state court has reached. The state court decision certainly does *not* indicate clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent state law grounds.

In view of the fact that the opinion cites only federal cases, mentions not even a single state case and contains no clear expression of reliance on adequate and independent state law grounds, and recognizing the considerable extent to which federal law was presented and reviewed, it is only reasonable to conclude that the state court misconstrued the federal cases and federal law presented. Consequently, the most reasonable explanation for the state court's deciding the case as it did is that it believed that federal law required it to do so.[9]

(2) Absence of Adequate And Independent State Law Ground

The final question remaining is whether it is clear from the face of the opinion that there is adequate

---

[9] The federal cases relied upon by the Commission in its brief to the Supreme Court of South Carolina are *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352-353, 38 S.Ct. 495, 62 L.Ed. 1154, 1155-1156 (1918), and *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441, 446, 43 S.Ct. 190, 192, 67 L.Ed. 340, 343 (1923), both of which cases were grossly misconstrued by the Commission.

and independent state law ground for the state court's decision. The companies submit that the adequacy and independence of any possible state law ground for the state court's decision is clearly absent from the face of the opinion. If anything, rather than being predicated thereon, the opinion is clearly in conflict with state constitutional, statutory and regulatory authority, prior decisions of the Supreme Court of South Carolina, state circuit court decisions, contentions of the Commission in other cases, and prior opinions of the state attorney general.

(a) No "Plain Statement"

The decision of the Supreme Court of South Carolina was entered on October 25, 1985, more than two years after the decision of this Court in *Long*. Thus, before rendering its judgement, the state court had more than reasonable time to consider the "plain statement" principle and other precepts identified in *Long*.

There is, however, no "plain statement" by the state court that the federal cases were being used only for the purpose of guidance and do not themselves compel the result that the Court has reached. There is no clear and express indication by the state court that it is alternatively basing its decision on bona fide separate, *adequate*, and independent state law grounds. This is understandable, in view of the fact that the state court has effectively established a new and different standard of appraisal (fair market value of a bare "majority" of property) that directly contradicts the standard of appraisal (fair market value of "all" property) that has been recognized in South Carolina for more than 100 years. The fact that there is no plain statement or clear expression

as required in *Long* is clearly indicative of the state court's failure to base its decision on adequate and independent state law grounds.

(b) No State Cases Supporting The Decision

The state court cites no state cases in support of its decision. In *Long*, this Court expressed its clear dissatisfaction over the fact that "not a single state case was cited to support the state court's holding." *Michigan v. Long*, 463 U.S. at 1043, 103 S.Ct. at 3477, 77 L.Ed.2d at 1216.

Conversely, and of even greater significance, is the fact that the decision of the state court is in direct conflict with overwhelming authority throughout the state.

(i) *The state court decision is in conflict with state constitution, statutes and regulations.* The state court cites constitutional, statutory and regulatory provisions that clearly mandate that *all* property must be appraised at fair market value. S.C. Const. art. III, §29; Section 12-37-930, Code of Laws of South Carolina (1976), as amended; and S.C. Property Tax Regulation 117-115. Then the court reverses direction and concludes that it is perfectly permissible for certain classes of property to be appraised at substantially less than fair market value as long as other property (including that of the companies) being appraised at fair market value represents a *majority* of the assessed value of the property in the county. In effect, the state court has allowed the assessing authority to amend[10] the South Carolina constitution, statutes and

---

[10] This is constitutionally prohibited. Article XVI of the South Carolina Constitution (reprinted in Appendix D, p. 17a) provides

regulations by establishing a new and different standard of appraisal: fair market value of a bare "majority" of property, instead of fair market value of "all" property. This new standard directly contradicts more than 100 years of practice in South Carolina in the valuation and appraisal of property.[11] In view of

---

the only method by which the State Constitution can be amended, and strict observance of every requirement of the amendatory process is mandatory. *McWhirter v. Bridges*, 249 S.C. 613, 155 S.E.2d 897 (1967); *Moffett v. Traxler*, 247 S.C. 298, 147 S.E.2d 255 (1966). It is patently clear that the provisions of Article XVI have been violated if, in essence, the assessing authority and the South Carolina courts have abandoned or negated and have effectively amended or stricken the requirements of Article III, §29 by replacing the requirement that all property be appraised at fair market value with the requirement that only 51% of the property be appraised at fair market value.

[11] The 1865 Constitutional Convention of South Carolina adopted and ratified provisions that recognized the standard of value for property taxation that had already been used in South Carolina for fifty years (*See* No. 2094, [1815] 6 S.C. Stat. 19, §11):

> All taxes upon property, real or personal, shall be laid upon the actual value of the property taxed . . . .

S.C. Const. art. 1, §8 (1865). This provision became Art. II, §3 of the 1868 Constitution, and it later became Art. III, §29 of the 1895 Constitution, as it presently exists. (See Appendix D, p. 15a.)

Five months after the ratification of the 1868 Constitution, the state legislature mandated that *all* property should be valued at "true value." No. 22 [1868] 14 S.C. Stat. 37, §48. The statute has remained basically unchanged since 1868 insofar as the standard of valuation is concerned. It is presently codified under Section 12-37-930 of the South Carolina Code (See Appendix D, p. 18a.)

Therefore, as has been the standard of practice since 1815, all

the fact that the state court's new standard of appraisal so grossly conflicts with entrenched constitutional, statutory and regulatory authority, it is patently clear that the decision of the state court could not reasonably be based upon state constitutional, statutory and regulatory law.

(ii) *The state court decision is in conflict with prior South Carolina Supreme Court cases, state circuit court cases, contentions of the Tax Commission in other cases and opinions of the state attorney general.* In addition to the fact that the state court fails to cite a single state case in support of its holding, of greater importance is the fact there exist prior decisions by the South Carolina Supreme Court[12] and state circuit courts, as well as contentions of the Tax Commission in other cases[13] and opinions of the South Carolina Attorney General, all of which are in direct conflict with the position of the Commission and the state court decision herein. (See Appendix H, p. 27a, for excerpts from opinions of state circuit court and state attorney general.)

---

property in South Carolina must be appraised at "actual," "true," or "fair market" value. Consequently, there is but *one class* of property—all property—for the purposes of appraisal. Thus, the appraised value of all property in the taxing district (county) must first be determined before any other steps in the assessment process can be taken. (See Appendix E, p. 22a.)

[12] *See*, e.g., *Wasson v. Mayes*, 252 S.C. 497, 167 S.E.2d 304 (1969); and *Meredith v. Elliott*, 247 S.C. 335, 147 S.E.2d 244 (1966). (See Appendix G, p. 25a for discussion of these cases.)

[13] *See*, e.g., the Tax Commission's return to the county's petition in *Lancaster County v. South Carolina Tax Commission*, No. 82-780 (S.C. Sup. Ct., dismissed, Sept. 27, 1983). (See Appendix G, p. 26a.)

In view of the foregoing, it is clear that there is no adequate and independent state law ground upon which the state court could have based its decision. Indeed, the assessing authority's position in this case totally contradicts state constitutional, statutory and regulatory law, as well as the position of its own attorney general vis-a-vis the same issue in other cases. Thus, it is only reasonable to conclude that the state court decided the case as it did because it misconstrued the federal cases and federal law presented.

CONCLUSION

Beginning with reference to Cheale, *Proverbial Folklore* (1875), the state court has charted a course that follows the misconstruction of federal law and cases and the misinterpretation of constitutional authority. Not a single state case is cited in the findings or decisions of the South Carolina Tax Commission, the South Carolina Tax Board of Review, the Circuit Court for the Fifth Judicial Circuit or the Supreme Court of South Carolina. References therein are to federal cases.

From the outset of this case, the companies specially set up the claim of right under the 14th Amendment, and the federal question went to the root of the case and dominated every part of it. The Supreme Court of South Carolina, however, decided the federal question in such a way as to conflict with state constitutional, statutory and regulatory law, its own prior decisions, a multitude of decisions of other state courts of last resort, decisions of federal courts of appeals and applicable decisions of this Court.

In view of the foregoing, and considering the principles and precepts established by this Court in *Michigan v. Long*, there is special and important reason for this Court to grant this petition for writ of certiorari and to review the decision of the Supreme Court of South Carolina.

Respectfully submitted,

TERRELL L. GLENN
THEODORE J. HOPKINS, JR.
ROBERT E. STEPP
MCNAIR GLENN KONDUROS CORLEY
SINGLETARY PORTER & DIBBLE, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

By: /s/THEODORE J. HOPKINS, JR.
THEODORE J. HOPKINS, JR.

Attorneys for Petitioners

Columbia, South Carolina
March 7, 1986

APPENDIX

APPENDIX

TABLE OF CONTENTS

App.	Subject Matter	Page
A	Order of Supreme Court of South Carolina	2a
B	Petition for Rehearing	10a
C	Federal Law	13a
D	State Law	15a
E	Taxation of Manufacturers in South Carolina	22a
F	Systematic and Intentional Action of Assessing Authority	23a
G	Prior State Court Decisions	25a
H	Other South Carolina Opinions: Circuit Court and Attorney General	27a
I	Decisions of Other State Courts of Last Resort	30a
J	U.S. Supreme Court Review of State Court Decisions	31a
K	Consequences Flowing From State Court Decision	35a

APPENDIX A

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

OWEN STEEL COMPANY, INC., OWEN SUPPLY COMPANY, INC., OWEN ELECTRIC STEEL COMPANY OF SOUTH CAROLINA, OWEN INDUSTRIAL PRODUCTS, INC., OWEN JOIST CORPORATION, OWEN MISCELLANEOUS METALS, INC. AND SOUTH CAROLINA STEEL CORPORATION,

Appellants,

v.

SOUTH CAROLINA TAX COMMISSION, JOHN T. WEEKS AS CHAIRMAN, CHARLES N. PLOWDEN AND S. HUNTER HOWARD, JR., AS COMMISSIONERS, AND CONSTITUTING THE SOUTH CAROLINA TAX COMMISSION; AND SOUTH CAROLINA TAX BOARD OF REVIEW, JOHN W. FOSTER AS CHAIRMAN, ISADORE BOGOSLOW, MARGARET R. DIGGS, VANCE B. DRAWDY, PAUL HEMPHILL, JOHN C. B. SMITH AND RONNIE L. SMITH, AS MEMBERS, AND CONSTITUTING THE SOUTH CAROLINA TAX BOARD OF REVIEW,

Respondents.

Appeal from Richland County
Walter J. Bristow, Jr., Circuit Judge

Opinion No. 22392
Heard October 7, 1985 - Filed October 25, 1985

AFFIRMED

Terrell L. Glenn, Theodore J. Hopkins, Jr. and Robert E. Stepp, all of McNair, Glenn, Konduros, Corley, Singletary, Porter & Dibble, P. A., Columbia, for Appellants.

Attorney General T. Travis Medlock, Deputy Attorney General Joe L. Allen, Jr., and Assistant Attorney General Ronald W. Urban, all of Columbia, of Respondents.

CHANDLER, A.J.: Appellants contend that evaluations and assessments placed upon their manufacturing plants by the South Carolina Tax Commission are discriminatory and constitutionally prohibited.

We disagree, and affirm the order of the Circuit Court sustaining an order of the South Carolina Tax Board of Review.

The order of Circuit Judge Walter J. Bristow, Jr. properly disposes of all the issues and is adopted.

ORDER OF CIRCUIT JUDGE WALTER J. BRISTOW, JR.

DATED AUGUST 23, 1983

This appeal, brought pursuant to the Administrative Procedures Act, Sec. 1-23-310, *et seq.*, is from an order of the S.C. Tax Board of Review (Board) sustaining a finding of the S. C. Tax Commission (Commission). This court is empowered by Sec. 1-23-380(g) to

> ". . . affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
>
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;

(4) Affected by other error of law;
(5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

This case was assigned to me by the Chief Judge for Administrative Purposes and came before me for hearing on June 24, 1983.

Petitioners are manufacturers with plants in Richland, Lexington and Greenville Counties. As such, their property is valued and assessed for *ad valorem* property taxation purposes by the Commission pursuant to Sec. 12-3-140(17). The Commission, through its Property Tax Division, proposed appraised and assessed values for petitioners' property for 1981. Petitioners timely appealed the Division's proposed assessment to the Commission.

Petitioners alleged before the Commission that the Commission had, in violation of constitutional and statutory provisions, systematically and intentionally assessed their property at fair market value while local assessing authorities (counties) assessed other real property at percentages of fair market value below the minimum level required by statute and Tax Regulation 117-115. They requested that the Commission equalize the proposed appraised and assessed values by reducing them to reflect the same proportion of fair market value as real property assessed by counties.

The Commission, while acknowledging that "certain real property that is assessed by the assessors of the respective counties is valued at less than fair market value" concluded that petitioners' property was taxed as equitably and uniformly as possible and refused to grant the requested relief.

On appeal to the Board pursuant to Sec. 12-5-50, the Board sustained the Commission's findings. From that order this appeal was perfected.

The crux of this appeal is whether it is constitutionally and statutorily permissible to tax certain classes of property (those assessed by the Commission) on a valuation and assessment that is a reasonable approximation of fair market value while other classes of property (those assessed by various counties) are taxed on a valuation and assessment that may be substantially less than fair market value. After carefully considering the voluminous record in this case together with the exhibits, pleadings, statutes and case law, I conclude that it is. (Emphasis supplied.)

S.C. Constitution Art. III, Sec. 29 mandates that "All taxes upon property, real and personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax." S.C. Constitution, Art. X, Sec. 1 requires that the "assessment of all property shall be equal and uniform in . . . (certain) . . . classifications." Similarly, Sec. 12-37-930 provides that "All property shall be valued for taxation at its true value in money . . ."

S.C. Constitution Art. X, Sec. 1, provides that the General Assembly may provide for the *ad valorem* taxation by the State or any of its subdivisions of all real and personal property. It then sets up eight classifications of property. It is provided that the assessment of all property shall be "equal and uniform" in those classifications. Through various statutes and regulations, in 1981 property in six of those eight classifications was either valued directly by the Commission or by regulations established by the Commission. It appears from reliable, probative and substantial evidence on the whole record that the property in those six categories has consistently been, and was in 1981, appraised and assessed at fair market value (or at least a reasonable approximation thereof).

The two exceptions to the above statement are those classifications of (1) legal residence [Art. X, Sec. 1(3)] and (2) "all other" real property not specially classified [Art. X, Sec. 1(5)]. These two classifications of property were in 1981 appraised and assessed by the counties in which the property was situated.

Pursuant to Act 208 of 1975, Act 163 of 1977, and Regulation 117-115, the Commission has made what are called "ratio studies" of every county and school district in the State. Appraisal or assessment ratio is the fractional relationship which an appraised or assessed value bears to the market value of the property in question. These ratio studies indicate that the median percentage of value on which the real property appraised and assessed by the counties was 45% for Richland County, 69.2% for Lexington County, and 40.8% for Greenville County.

Ignoring the ancient maxim that "two wrongs do not make one right" [Cheale, *Proverbial Folklore* (1875)], petitioners request that their individual situation be remedied, not by requiring the incorrect assessments by the counties to be increased to fair market value, but by requiring the admittedly correct and constitutional assessments by the Commission to be reduced to the incorrect and unconstitutional median percentages assessed by the respective counties.

There is respectable (petitioners say controlling) authority for this position. The Supreme Court of the United States in *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 US 441, 446, 43 SCt 190, 192 (1923), expressly held:

> "This court holds that the right of a taxpayer whose property alone is taxed at 100 percent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute. The conclusion is

> based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law."

See also *Cummings v. Merchants' Nat. Bank*, 101 US 153, 25 LEd 903 (1880); *Greene v. Louisville and Interurban R. Co.*, 244 US 499, 37 SCt 673, 61 LEd 1280 (1917).

However, each case must bottom on its own facts. In this case, as previously indicated, petitioners claim that the values of their property should be reduced to the median percentage of value of property assessed by the respective counties. The claim ignores the fact that, as in any median figure, there are some properties taxed at a higher figure than the median and some at a lower. Without going into detail, there is reliable, probative, and substantial evidence in the record that in each of the counties in question there were some properties assessed at substantially lower than the median rate and some at substantially higher than the median rate. The evidence indicates that some properties were taxed by these counties at 100%, and even 110% and above, of true value.

In other words, rather than indicating a systematic and intentional undervaluation of property by the counties, these ratio studies really indicate how rapidly equalization programs erode. The Commission found, and the findings are supported by reliable, probative and substantial evidence, that there has been no intentional failure of the counties to reassess the property under their jurisdiction and that in each of the counties the property is being assessed as equally and uniformly as possible.

In fairness, it must be admitted that petitioners apparently do not complain of any systematic and intentional undervaluation by the counties but rather of the systematic and intentional actions of the Commission in assessing

petitioners' properties at 100% of fair market value while knowing that the counties were assessing property at lesser percentages. While neither the Commission nor the Board made any express finding on this point, it is implicit in the decision of the Commission that, since the Commission found that the counties were assessing as equally and uniformly as possible, that there was no intentional violation of petitioners' rights by the Commission. Stated differently, since the Commission found that the counties were doing their best to do their job, it should do its best to do its job.

The Commission also found, which finding is likewise supported by reliable, probative and substantial evidence, that the majority of the assessed value of all taxable property within the three counties in question was represented by property in the six categories valued directly by the Commission or by regulations established by the Commission. Reliable, probative and substantial evidence indicates that all of such property is taxed in similar proportion of value as in the property of petitioners. In other words, property that is valued and assessed at less than true market value (or a reasonable approximation thereof) represents a minority, rather than a majority, of the assessed value of the property in the counties concerned.

The Commission therefore found, which is again supported by the record, that to grant petitioners' request would not equalize the assessments, but might further compound any inequity which might exist. Petitioners would, if their request were granted, pay a disproportionate lesser tax than all others in their same class.

I have carefully considered all of the issues raised by petitioners, and find that the decision of the Board sustaining the Commission is supported by reliable, probative, and substantial evidence on the whole record, was not in violation of constitutional or statutory provisions, was not in excess of its statutory authority, made upon unlawful

procedure, or affected by other error of law. I find no abuse of discretion. The order should be affirmed. It is, therefore,

ORDERED:

1. That the relief prayed for in the petition be, and it is hereby, denied, and the petition be, and it is hereby, dismissed with prejudice.

2. That the order of the Tax Board of Review dated December 17, 1982, be, and it is hereby, affirmed.

AFFIRMED.

NESS, C.J., GREGORY, HARWELL and FINNEY, JJ., concur.

APPENDIX B

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
HONORABLE WALTER J. BRISTOW, JR., JUDGE
Calendar No. 82-CP-40-0196

OWEN STEEL COMPANY, INC., *et al.*,
Appellants,

vs.

SOUTH CAROLINA TAX COMMISSION, *et al.*,
Respondents.

PETITION FOR REHEARING

TERRELL L. GLENN
THEODORE J. HOPKINS, JR.
ROBERT E. STEPP
McNAIR GLENN KONDUROS CORLEY
SINGLETARY PORTER & DIBBLE, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
Attorneys for Appellants

Other Counsel of Record:
Attorney General T. Travis Medlock,
Deputy Attorney General Joe L. Allen, Jr.
Assistant Attorney General Ronald W. Urban
Attorneys for Respondents

Appellants Owen Steel Company, Inc.; Owen Supply Company, Inc.; Owen Electric Steel Company of South Carolina; Owen Industrial Products, Inc.; Owen Joist Corporation; Owen Miscellaneous Metals, Inc.; and South Carolina Steel Corporation hereby respectfully petition the Court for rehearing on the following grounds:

1. The Court overlooked or misapprehended the applicability of Article III, Section 29 of the South Carolina Constitution, which requires that all property be appraised at fair market value before it is assessed for taxation.

2. The Court overlooked or misapprehended the applicability of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution, which, among other things, prohibit discrimination against a taxpayer by the systematic and intentional appraisal of some property within the taxing jurisdiction at full fair market value while other property within the jurisdiction is appraised at substantially less than fair market value.

3. The Court overlooked or misapprehended the applicability of *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441, 43 S.Ct. 190 (1923) which holds that a taxing authority's duty to appraise property at fair market value must yield to the taxing authority's duty to insure uniformity and equality in the appraisal of property for taxation.

4. The Court overlooked that appellants are entitled to a reduction of the appraised value of their properties to the median appraisal ratio in each County as the proper remedy for the prohibited disparity in appraised values.

The consent of the parties concerning the status of the specific property involved in this case is obviated by the Orders attached hereto as Exhibits A, B and C.

Respectfully submitted,

McNair Glenn Konduros Corley
Singletary Porter & Dibble, P.A.
Terrell L. Glenn
Theodore J. Hopkins, Jr.
Robert E. Stepp
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

By: s/s Terrell L. Glenn

Attorneys for Appellants

Columbia, South Carolina

November 4, 1984

(Exhibits Omitted)

APPENDIX C

Federal Law

United States Constitution, Amendment 14, Section 1.

§ 1. Citizenship rights not to be abridged by states.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1257.

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question

or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

APPENDIX D

State Law

South Carolina Constitution of 1895, Article III, Section 29

§ 29. Taxes laid upon actual assessed value.

All taxes upon property, real and personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax.

South Carolina Constitution of 1895, Article X, Section 1

§ 1. Taxation and assessment.

The General Assembly may provide for the ad valorem taxation by the State or any of its subdivisions of all real and personal property. The assessment of all property shall be equal and uniform in the following classifications:

(1) All real and personal property owned by or leased to manufacturers, utilities and mining operations and used by the manufacturer, utility and mining operations, in the conduct of such business shall be taxed on an assessment equal to ten and one-half percent of the fair market value of such property.

(2) All real and personal property owned by or leased to companies primarily engaged in transportation for hire of persons or property and used by the company in the conduct of such business shall be taxed on an assessment equal to nine and one-half percent of the fair market value of such property.

(3) The legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal

to four percent of the *fair market value* of such property. (Emphasis supplied.)

(4) Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to:

(A) four percent of its value for such purposes when owned or leased to individuals or partnerships and certain corporations which do not:

(i) have more than ten shareholders;

(ii) have as a shareholder a person (other than an estate) who is not an individual;

(iii) have a nonresident alien as a shareholder; and

(iv) have more than one class of stock.

(B) six percent of its value for such purposes when owned or leased to corporations, except for certain corporations specified in (A) above.

Provided, that the General Assembly shall by general law provide for a penalty system on lands classified as agricultural lands to insure the proper utilization of this classification.

(5) All other real property not herein provided for shall be taxed on an assessment equal to six percent of the *fair market value* of such property. (Emphasis supplied.)

(6) All inventories of business establishments shall be taxed on an assessment equal to six percent of the fair market value of such property.

(7) All farm machinery and equipment except motor vehicles licensed for use on the highways owned by farmers and used on agricultural lands shall be taxed on an assessment equal to five percent of the fair market value.

(8) All other personal property shall be taxed on an assessment equal to ten and one-half percent of the fair market value of such property.

South Carolina Constitution of 1895, Article X, Section 2(c).

(c) Statutes pertaining to methods of assessment of property for *ad valorem* taxation not in conflict with this article shall continue in force until changed by an act of the General Assembly.

South Carolina Constitution of 1895, Article XVI, Section 1.

§ 1. Amendments.

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives; *provided*, however, that for the general elections in 1970, 1972, 1974, 1976, 1978, 1980 and 1982 revision of an entire article or the addition of a new article may be proposed as a single amendment with only one question being required to be submitted to the electors. Such amendment may delete, revise and transpose provisions from other articles of the Constitution provided such provisions are germane to the subject matter of the article being revised or being proposed. If the same be agreed to by two-thirds of the members elected to each House, such amendment or amendments shall be entered on the Journals respectively, with the yeas and nays taken thereon; and the same shall be submitted to the qualified electors of the State, at the next general election thereafter for Representatives; and if a majority of the electors qualified to vote for members of the General Assembly, voting thereon, shall vote in favor of such amendment or amendments, and a majority of each branch of the next General Assembly shall, after such election, and before another, ratify the same amendment or amendments, by yeas and nays, the same shall become part of the Constitution; *Provided*, that such amendment or amendments shall have been read three times, on three several days, in each House.

Section 12-37-930, Code of Laws of South Carolina, 1976.

§ 12-37-930. Valuation of property; depreciation allowances for manufacturer's machinery and equipment; Tax Commission may permit adjustment in allowance.

All property shall be valued for taxation at its true value in money which in all cases shall be held to be the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed as to the uses and purposes for which it is adapted and for which it is capable of being used. *Provided*, however, that acreage allotments or marketing quota allotments for any commodity as established under any program of the United States Department of Agriculture shall be classified as incorporeal hereditaments and the market value of any real property to which they are attached shall not include the value, if any, of such acreage allotment or marketing quota. *Provided*, further, fair market value of manufacturer's machinery and equipment used in the conduct of the manufacturing business, excluding, however, vehicles licensed by the Highway Department, boats and airplanes shall be determined by reducing the original cost by an annual allowance for depreciation as stated in the following schedule. (Emphasis supplied.)

(Schedule Omitted)

In no event should the original cost be reduced more than eighty percent. In the year of acquisition, depreciation shall be allowed as if the property were owned for the full year. The term "original cost" shall mean gross capitalized cost as shown by the taxpayer's records for income tax purposes.

Notwithstanding the percentage allowance stated in the schedule above, the Commission may, after examination of the relevant facts, permit an adjustment in the percentage allowance, with the total allowance not to exceed twenty-five percent, on account of extraordinary obsolescence.

Section 12-43-210, Code of Laws of South Carolina, 1976.

§ 12-43-210. Uniform and equitable assessments; rules and regulations.

All property shall be uniformly and equitably assessed throughout the State. The South Carolina Tax Commission (commission) shall promulgate rules and regulations to insure such equalization which shall be adhered to by all assessing officials in the State. (Emphasis supplied.)

South Carolina Property Tax Regulation 117-115.

117-115. General Requirements for Ratio Study.

Section 1: General Requirements. In accordance with Act 208, the South Carolina Tax Commission shall annually make a ratio study of all the counties in the state to determine if the level of appraisal and/or assessment and the degree of equity has been achieved as required by law. The Commission shall obtain information concerning all real property transfers which involved a true consideration of $100 or more and property that the sales price includes the same land area and improvements as shown on the assessment rolls or appraisal records. This information shall be obtained initially from the Assessor and field checked when necessary by personnel from the Tax Commission. The sales that best reflect market value sales will be used to make an analysis to determine the level of appraisal and/or assessment and the degree of equity. *If a county has a median appraisal for all property as a whole or any class* higher than 105% or *lower than 80% of fair market value it shall be deemed unacceptable by the South Carolina*

Tax Commission. If a county has an assessment of more than 105% of the required assessment ratio or lower than 80% of the required assessment ratio it shall be deemed unacceptable by the Commission. (Emphasis supplied.)

If the index of inequality reaches a rating of higher than 15% for the county as a whole or any class of property, it shall be deemed unacceptable by the Commission.

Section 2: Average Appraisal. *The median shall be the criteria* [sic] *to determine the level of appraisal* or assessment *for all property as a whole or for any class*. (Emphasis supplied.)

Section 3: Index of Appraisal or Assessment Inequality. The index of inequality is defined as: one-half the difference between the ratio of the third and first quartile values over the median ratio.

$$= \frac{{}^{1}/_{2}(Q3-Q1)}{\text{Median}}$$

The answer when computed is registered as a percent. Whenever this formula is used on all property as a whole or any class with a rating above 15%, it shall be deemed unacceptable by the Commission.

Section 4: Appraisals in Lieu of Sales. Whenever a county lacks sufficient market value sales to make an accurate ratio study for the county as a whole or any class, the Property Tax Division shall make appraisals of real property which shall be used in lieu of sales in ascertaining level of assessment and the degree of equity.

Section 5: Valuation of Agricultural Property Based on Use. The Tax Commission shall make studies to determine if agricultural real property is being appraised based on use as prescribed by law. The Commission shall make necessary studies to estimate what the market value of real property is when the highest and best use is for agricultural purposes.

Section 6: Counties Failure to Meet the Requirements of the Law. Ratio studies will be made as of December 31 of each year and the counties shall be notified of the findings of these ratio studies by March 1.

If a county does not meet the standards as prescribed by law and regulation, it shall be notified of the deficiency and what should be done to correct it. If any county feels that the decision made by the Commission is based on inaccurate information or was in error, it shall have the right to hearing before the Commission that the ratio study was correct. If it is found by the Commission that the ratio study was correct, the county will be given a prescribed time to make the necessary corrections and if the county fails to do so, the Commission shall make application to the Circuit Court for the determination as to whether or not such county meets the requirements as prescribed by Act 208 and its regulations. If the Circuit Court determines the county needs reassessments or remapping, such county shall be required to commence the reassessment or remapping within thirty days of such determination.

Any county which wilfully fails to comply with the provisions of this act shall not be entitled to twenty percent of the allocation of the taxes as provided for in the General Appropriations Act for State Aid to Subdivisions. The Commission shall make application to the Circuit Court for a determination as to whether or not such county meets the requirements of this act. The Commission shall then, based on this determination, certify to the State Treasurer that such county meets the requirements of this act before any tax allocation is made to the county.

NINE STEPS IN THE TAXATION OF PROPERTY IN SOUTH CAROLINA

ACTION	*AUTHORITY*
VALUATION	
For All Property:	
1. FAIR MARKET VALUE Proposed ("Actual" or "True Value")	S.C. Const. art. III, § 29 S.C. Code § 12-37-930
2. APPRAISAL RATIO applied (80%-105% of Fair Market Value)	Property Tax Reg. § 117-115
3. APPRAISED VALUE proposed	Property Tax Reg. § 117-115
ASSESSMENT	
For Each Class of Property:	
4. ASSESSMENT RATIO applied	S.C. Const. art. X. § 1 S.C. Code § 12-43-220
5. ASSESSED VALUE proposed ("Tax Value" by "Notice of Assessment")	§ 12-41-130; 12-43-300
6. MILLAGE RATE applied ("Tax Rate"-% of Assessed Value)	
7. TAX determined	
8. LEVI ("Tax Notice")	
9. COLLECTION	

APPENDIX F

Systematic and Intentional Action of the Assessing Authority

Knowledge and Intent of the Tax Commission

During the years (1976 through 1981) that the Tax Commission was appraising property of manufacturers (including that of the companies) at fair market value, it did so with the knowledge that the respective counties were not locally appraising property in compliance with state law.

> *Mr. Hopkins:* Alright. Now, during those tax years, when the Division was assessing manufacturers at 80-100% of fair market value, was the Division aware then that the counties were not assessing their respective properties with the exception of Lexington for those years—were not assessing their respective properties at 80-100% of fair market value? Was the Division aware of that?
>
> *Mr. Pitts [Director, Property Tax Division]:* Were we aware of it? Yes.

S.C. Sup. Ct. Tr. 49-50.

That its actions were systematic and intentional was admitted by the assessing authority.

> *Mr. Hopkins:* In your opinion, did the Property Tax Division systematically—and by using the word "systematically" I mean to say year-after-year on a consistent and continuing basis—and intentionally appraise the properties of these companies . . . at 80-100% [of] fair market value with the knowledge that the counties in which such properties were located were appraising

their locally assessed properties at substantially lower percentages of fair market value?

Mr. Pitts: Yes.

S.C. Sup. Ct. Tr. 53.

Furthermore, the evidence is conclusive that the systematic and intentional actions by the Tax Commission occurred under circumstances where it was acting closely in concert with and in a supervisory capacity over the respective county assessors. (S.C. Sup. Ct. Tr. 50, 51.)

Knowledge and Intent of the County Assessors

The county assessors repeatedly admitted that they knew that they were not complying with the law at the very time that they were undervaluing property. Equally significant, they recognized that while they were knowingly appraising property far below the minimum amount required by law, they knew that the Tax Commission was assessing property within its jurisdiction at full fair market value. The counties were also aware of the consequences of their action in view of the Commission's full valuation, to wit: when locally assessed property is not appraised at fair market value and the appraisal (tax) base remains relatively low, millage rates must continue relatively high and the property tax burden is shifted to those persons whose property is appraised by the Tax Commission at a higher percentage of fair market value than those whose property is appraised by the county. (S.C. Sup. Ct. Tr. 84-86, 89, 90, 130, 131, 141-143.)

The counties' knowledge of the disparity and its effect did not deter their course. They systematically continued to grossly undervalue property year after year by failing to appraise at anywhere near the legally required minimum percentage of fair market value. It is manifest that the conduct of the assessing authority was intentional.

APPENDIX G

Prior State Court Decisions In Conflict With Decision Herein

The Supreme Court of South Carolina has consistently recognized the standard of appraisal that all, not a bare majority, of the property in the taxing district (county) must be appraised at fair market value. See, e.g. *Wasson v. Mayes*, 252 S.C. 497, 167 S.E.2d 304 (1969); *Meredith v. Elliott*, 247 S.C. 335, 147 S.E.2d 244 (1966).

In *Wasson*, the state court referred to Article III, Section 29 of the state constitution and Section 12-37-930 of the state code as "the provisions of the Constitution and the statute which control the valuation of property for the purpose of *ad valorem* taxes." *Wasson*, 252 S.C. at 499, 167 S.E.2d at 305 (1969). The state court concluded that the Tax Commission's reasons for overvaluing the taxpayer's property were clearly untenable, and quoted with favor from the opinion of the Supreme Court of North Dakota in *Werner v. Riebe*, 70 N.D. 533, 296 N.W. 422, 156 A.L.R. 1254 (1941):

> "If the taxing authorities have performed their statutory duty with respect to other property in the taxing district and have assessed it at its *true value*, there can be no discrimination in also assessing the petitioner's property at its true value."

Wasson, 252 S.C. at 502, 167 S.E. 2d at 306 (1969). (Emphasis supplied.)

In *Meredith*, the state court did not reach the valuation question because the taxpayer had failed to exhaust its administrative remedies; nevertheless, the state court, as it consistently does, referenced the "Constitutional and

statutory provisions here pertinent," including Article III, Section 29 and Section 12-37-930, requiring all property to be appraised at fair market value. *Meredith*, 247 S.C. at 339, 147 S.E.2d at 246 (1966).

Contrary to its position as to the companies herein, the Tax Commission recently readopted the position that all property and all classes of property must be taxed upon actual or fair market value. On August 31, 1982, Lancaster County filed its petition in the original jurisdiction of the Supreme Court of South Carolina for a declaratory judgment that Article X, Section 1 of the South Carolina Constitution as well as Act 208 were unconstitutional. In its return to the petition, the Commission made the following statement:

> *There exists a lack of equality among the classes of property when several classes are being taxed upon actual value while other classes are taxed upon a value that is substantially less than fair market value.* The Commission's order is that *all* must be taxed upon actual or market value, or in the same proportion of actual value. Such is a requirement of the equal protection clauses of both the Federal and State Constitutions as well as Act 208 and Article X.

Defendants-Respondents' return to petition for original jurisdiction at 7, *Lancaster County v. S.C. Tax Commission*, No. 82-780 (S.C. Sup. Ct., dismissed, Sept. 27, 1983) (emphasis supplied).

Clearly the position of the Tax Commission and state court as to the companies herein and before this Court (that it is permissible to appraise some classes at substantially less than fair market value while other classes are appraised at full fair market value) is exactly *opposite* to the above quoted contention in *Lancaster County*. (See Appendix A, p. 5a.)

APPENDIX H

Other South Carolina Opinions: Circuit Court and Attorney General

Circuit Court for the Fourteenth Judicial Court

During April of 1982, the Tax Commission filed a petition in the Court of Common Pleas, Jasper County, seeking an order of the court requiring Jasper County to equalize the assessment of all property in the county. Paragraph 4 of the Commission's petition states:

> That the *classes* of property valued and assessed by the Tax Assessor of Jasper County are and have been consistently taxed on a valuation and assessment that is substantially less than such property's fair market value. That the *other classes* of property not valued and assessed by the Tax Assessor of Jasper County are and have been taxed on a valuation and assessment that reasonably approximates the fair market value of such property. *That by reason of such, the property not valued and assessed by the Assessor of Jasper County is being unlawfully and unconstitutionally taxed.*

Petition of S.C. Tax Commission at 1, *S.C. Tax Commission v. Spivey*, C/A No. 82-CP-27-94 (Cir. Ct., Jasper Co., April 28, 1982) (emphasis supplied).

The presiding judge granted the Tax Commission's petition. In the order, the court recognized the requirement of uniformity and equality in appraising all property:

> The action of the Commission results in *all* taxable property being assessed upon an equal and uniform proportion of *fair market value.*

Order of Cir. Ct., Jasper County, at 2, *S.C. Tax Commission v. Spivey*, C/A No. 82-CP-27-94 (Cir. Ct., Jasper Co., April 28, 1982) (emphasis supplied).

South Carolina Attorney General

The South Carolina Attorney General, whose office represents the Tax Commission, has consistently emphasized the threshold requirement that all property must first be appraised at fair market value in order to achieve uniformity and equality in taxation:

> Under the settled principals [sic] of law . . . it is the opinion of this office that *all property in the district* must be taxed on an assessment that is equal and uniform both as to the rate of taxation and as to the proportion of value to which the same is applied.

Op. Att'y. Gen. No. 3923 (Jan. 2, 1975) (emphasis supplied).

The foregoing is quite similar to the language in this Court's opinion in *Greene v. Louisville & Interurban Railroad*, 244 U.S. 499; 37 S.Ct. 673, 61 L.Ed. 1280 (1917):

> "Taxing by a uniform rule requires uniformity not only in the rate of taxation, but also uniformity in the mode of the assessment upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation; and this equality of burden cannot exist without uniformity in the mode of assessment, as well as in the rate of taxation." *Exchange Bank v. Hines*, 3 Ohio St. 1, 15, quoted in *Cummings v. Merchants' Nat. Bank*, 101 U.S. 153, 158, 25 L.Ed. 903, 905.

Id., 244 U.S. at 515, 37 S.Ct. at 680, 61 L.Ed. at 1289 (1917).

Other opinions of the state attorney general recognize the requirement that all property must be appraised/valued at fair market value. *See*, e.g., Op. Att'y Gen. No. 2610 (Jan. 7, 1969), No. 3045 (Nov. 13, 1970), and No. 78-155 (Sept. 1, 1978).

APPENDIX I

Decisions Of Other State Courts Of Last Resort Supporting The Companies' 14th Amendment Claim

[ALABAMA] *State v. Alabama Power Co.*, 254 Ala. 327, 48 So.2d 445 (1950); [ARIZONA] *Southern Pacific Company v. Cochise County*, 92 Ariz. 395, 377 P.2d 770 (1963); [FLORIDA] *Southern Bell Telephone and Telegraph Co. v. County of Dade*, 275 So.2d 4 (1973); [GEORGIA] *McLennan v. Undercofler*, 222 Ga. 302, 149 S.E.2d 705 (1966); *Undercofler v. Seaboard Air Line Railroad Co.*, 222 Ga. 822, 152 S.E.2d 878 (1966); [ILLINOIS] *People ex. rel. Wenzel v. Chicago & North Western Railway*, 28 Ill. 2d 205, 190 N.E.2d 780 (1963); *People v. Gulf, Mobile and Ohio Railroad Co.*, 22 Ill. 2d 104, 174 N.E.2d 182 (1961); [KANSAS] *Addington v. Board of County Commissioners*, 191 Kan. 528, 382 P.2d 315 (1963); [MASSACHUSETTS] *Tregor v. Board of Assessors of City of Boston*, 377 Mass. 602, 387 N.E.2d 538 (1979); [NEBRASKA] *Kearney Convention Center, Inc. v. Buffalo County Board of Equalization*, 216 Neb. 292, 344 N.W.2d 620 (1984); [NEW JERSEY] *Delaware Lackawanna and Western Railroad Company v. Neeld*, 23 N.J. 561, 130 A.2d 6 (1957); [NEW MEXICO] *Ernest W. Hahn, Inc. v. County Assessor for Bernalilo County*, 92 N.M. 609, 592 P.2d 965 (1978); [OHIO] *State Ex. Rel. Park Investment Co. v. Board of Tax Appeals*, 26 Ohio St. 2d 161, 270 N.E.2d 342 (1971); [OKLAHOMA] *Appeal of National Bank of Tulsa*, 312 P.2d 495 (1957); [VIRGINIA] *Perkins v. County of Albemarle*, 214 Va. 240, 198 S.E.2d 626 (1973); [WEST VIRGINIA] *Killen v. Logan County Commission*, 295 S.E.2d 689 (1982).

APPENDIX J

U.S. Supreme Court Review of State Court Decisions

Where a railway company in the court of original jurisdiction claimed its 14th Amendment rights, and the judgment of the Supreme Court of Illinois was based on common law and was silent as to the federal question, this Court held that it had jurisidiction to re-examine the state court judgement.

> [I]t is equally well settled that the failure of the state court to pass on the Federal right or immunity specially set up, of record, is not conclusive, but this court will decide the Federal question if the necessary effect of the judgment is to deny a Federal right or immunity specially set up or claimed, and which, if recognized and enforced, would require a judgment different from one resting upon some ground of local or general law.

Chicago, B. & Q. R. Co. v. Illinois, 200 U.S. 561, 580, 26 S.Ct. 341, 345, 50 L.Ed. 596, 604 (1906).

Where the Supreme Court of Mississippi found it unnecessary to pass upon the constitutionality of a state income tax statute, this Court granted review of the state court judgment in view of the Court's concern for the *practical* operation of the statute.

> Even though the claimed constitutional protection be denied on nonfederal grounds, it is the province of this Court to inquire whether the decision of the state court rests upon a fair or substantial basis. If unsubstantial, constitutional obligations may not be thus avoided. See *Ward v. Love County*, 253 U.S. 17, 22, 40 S.Ct. 419, 64 L.Ed.

> 715; *Enterprise Irrigation District v. Canal Company*, 243 U.S. 157, 164, 37 S.Ct. 318, 61 L.Ed. 644; *Fox River Paper Co. v. Railroad Commission*, 274 U.S. 651, 655, 47 S.Ct. 669, 71 L.Ed. 1279.... If the Constitution exacts a uniform application of this tax on appellant and his competitors, his constitutional rights are denied as well by the refusal of the state court to decide the question, as by an erroneous decision of it, see *Greene v. Louisville & Interurban R.R.Co.*, 244 U.S. 499, 508, 512 *et. seq.*, 37 S.Ct. 673, 61 L.Ed. 1280.

Lawrence v. State Tax Commission, 286 U.S. 276, 282, 52 S.Ct. 556, 558, 76 L.Ed. 1102, 1107 (1932).

Recently, in his dissent in *Long* as to the Court's granting review of a judgement by the Michigan Supreme Court *upholding* a citizen's assertion of a 4th Amendment right, Justice Stevens described "the primary role" of this Court.

> I believe that in reviewing the decisions of state courts, the primary role of this Court is to make sure that persons who seek to *vindicate* federal rights have been fairly heard. That belief resonates with statements in many of our prior cases. In *Abie State Bank v. Bryan*, 282 U.S. 765, 51 S.Ct. 252, 75 L.Ed. 690 (1931), the Supreme Court of Nebraska had rejected a federal constitutional claim, relying in part on the state law doctrine of laches. Writing for the Court in response to the Nebraska governor's argument that the Court should not accept jurisdiction because laches provide an independent ground for decision, Chief Justice Hughes concluded that this Court must ascertain for itself whether the asserted non-federal ground independently and adequately supported the judgment "in order that constitutional guarantees may appropriately be

> enforced." *Id.*, at 773, 51 S.Ct., at 255. He relied on our earlier opinion in *Union Pacific Railroad Co. v. Public Service Commission of Missouri*, 248 U.S. 67, 39 S.Ct. 24, 63 L.Ed. 131 (1918), in which Justice Holmes had made it clear that the Court engaged in such an inquiry so that it would not "be possible for a State to impose an unconstitutional burden" on a private party. *Id.*, at 70, 39 S.Ct., at 25. And both *Abie* and *Union Pacific* rely on *Creswill v. Knights of Pythias*, 225 U.S. 246, 261, 32 S.Ct. 822, 827, 56 L.Ed. 1074, (1912), in which the Court explained its duty to review the findings of fact of a state court "where a Federal right has been denied."

Michigan v. Long, 463 U.S. at 1068, 103 S.Ct. at 3490, 77 L.Ed.2d at 1233 (1983) (STEVENS, J., dissenting).

In reviewing the decision of the Supreme Court of Nebraska in *Abie State Bank*, this Court cited as authority the earlier case of *Broad River Power Co. v. South Carolina*, 281 U.S. 537, 50 S.Ct. 401, 74 L.Ed. 1023 (1930), in which this Court considered a decision of the Supreme Court of South Carolina. The Court in *Broad River* stated:

> Whether the state court has denied to rights asserted under local law the protection which the Constitution guarantees is a question upon which the petitioners are entitled to invoke the judgment of this Court. Even though the constitutional protection invoked be denied on nonfederal grounds, it is the province of this Court to inquire whether the decision of the state court rests upon a fair or substantial basis. If unsubstantial, constitutional obligations may not be thus evaded. Fox River Paper Co. v. Railroad Commission of Wisconsin, 274 U.S. 651, 655; Ward v. Love County, 253 U.S. 17, 22; Enterprise Irrigation District v. Canal Co., 243 U.S. 157, 164.

Id., 281 U.S. at 540, 50 S.Ct. at 402, 74 L.Ed. at 1030 (1930).

The Court in *Broad River* ultimately concluded that the state court's interpretation of South Carolina statutes did not "so depart from established principles as to be without substantial basis, or present any ground for the protection, under the Constitution, of rights or immunities which the state court has found to be nonexistent." *Id.*, 281 U.S. at 543, 50 S.Ct. at 404, 74 L.Ed. at 1031 (1930).

Here, however, in view of the obvious conflict of the new standard of appraisal with established standards and principles it is patently clear that the state court's interpretation of South Carolina law does, indeed, "so depart from established principles as to be without substantial basis." (See Appendix K for a detailed example of the grave consequences that would flow from the state court's far "departure from established principles.")

APPENDIX K

Consequences Flowing From State Court Decision

The following examples illustrate how critical it is for the assessing authority to appraise all property at fair market value before applying different ratios to fair market value for determining assessed value. (See generally, Appendix E, p. 19a.)

Assume that in County A, as is the case in South Carolina, there is only one class of property for the purpose of determining appraised value [i.e., all property (appraised at fair market value)]. Also, assume that there are four classes of property for the purposes of determining assessed value, which classes respectively reflect different percentages (i.e., agricultural 4%, residential 4%, commercial 6% and manufacturing 10.5%) of appraised value.

Example I assumes that the *assessed values* of all of the property within each of the respective assessment classes are determined after all agricultural, residential, commercial and manufacturing properties in the county are appraised at full fair market value. Assume further that after the appraisals, the appraised value of all agricultural property is $100 million, the appraised value of all residential property is $100 million, the appraised value of all commercial property is $100 million, and the appraised value of all manufacturing property is $100 million. Finally, assume that County A needs one million dollars in tax revenues.

There follows an illustration of the distribution of the tax burden among the four classes.

1.	Assessment of agricultural property (4% of 100,000,000) = ...	4,000,000
2.	Assessment of residential property (4% of 100,000,000) = ...	4,000,000
3.	Assessment of commercial property (6% of 100,000,000) = ...	6,000,000
4.	Assessment of manufacturing property (10.5% of 100,000,000) = ...	10,500,000
5.	Total Assessment for County A	24,500,000
6.	Tax Rate for County A [1,000,000 (tax needed) 24,500,000 (total assessment)] 4.08163%	
7.	Tax on agricultural property (4,000,000 x 4.08163%) = ...	163,265
8.	Tax on residential property (4,000,000 x 4.08163%) = ...	163,265
9.	Tax on commercial property (6,000,000 x 4.08163%) = ...	244,898
10.	Tax on manufacturing property (10,500,000 x 4.08163%) = ...	428,572
11.	Total Tax Revenues	1,000,000
12.	Burden (percentage) of Total Taxes Borne by Respective Classes:	
	(a) Agricultural:	16.3%
	(b) Residential:	16.3%
	(c) Commercial:	24.5%
	(d) Manufacturing:	42.9%

Example II assumes that years have passed and County A has done an outstanding job in complying with the Commission's orders by computerizing its assessment operations and making sure that all property under its jurisdiction is appraised at full fair market value. On the

other hand, the Commission, for whatever the reason may be, has fallen behind in its appraisals to the point that it is appraising all manufacturing property in County A at only 30% of fair market value. Following these inequitable appraisals, the *assessed* values of all of the property *within* each of the respective assessment classes are determined as provided under Article X, Section 1 of the South Carolina Constitution and Section 12-43-220 of the Code of Laws of South Carolina. Situation II also assumes that County A still needs one million dollars in tax revenues.

There follows an illustration of the alarming shift in the distribution of the tax burden among the four classes.

1.	Assessment of agricultural property (4% of 100,000,000) = ...	4,000,000
2.	Assessment of residential property (4% of 100,000,000) = ...	4,000,000
3.	Assessment of commercial property (6% of 100,000,000) = lf	6,000,000
4.	Assessment of manufacturing property (10.5% of *30% of* 100,000,000) = ...	3,150,000
5.	Total Assessment for County A	17,150,000
6.	Tax Rate for County A [1,000,000 (tax needed) 17,150,000 (total assessment)] = ...	5.8309%
7.	Tax on agricultural property (4,000,000 x 5.8309%) = ...	233,236
8.	Tax on residential property (4,000,000 x 5.8309%) = ...	233,236
9.	Tax on commercial property (6,000,000 x 5.8309%) = ...	349,854
10.	Tax on manufacturing property (3,150,000 x 5.8309%) = ...	183,674

11. Total Tax Revenues 1,000,000

12. Burden (percentage) of Total Taxes Borne by Respective Classes:

(a) Agricultural:	23.3%
(b) Residential:	23.3%
(c) Commercial:	35.0%
(d) Manufacturing:	18.4%

The foregoing examples illustrate how the manufacturing sector's share of the total tax burden was reduced from 42.9% to 18.4% at the expense of the other three classes. Thus, notwithstanding uniformity and equality *within* each of the respective classes for the purpose of determining *assessed* values (as provided under Article X, Section 1 of the South Carolina Constitution and Section 12-43-220 of the Code of Laws of South Carolina), there has been an unjust and inequitable shift of the property tax burden from the manufacturing sector to the agricultural, residential and commercial sectors because equality and uniformity were not recognized *between or among* the classes as well for the purpose of determining *appraised* value (as provided under Article III, Section 29 of the South Carolina Constitution, Section 12-37-930 of the Code of Laws of South Carolina, and South Carolina Property Tax Regulation 117-115).

85-1484

No. 85-

Supreme Court, U.S.
FILED
MAR 27 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

OWEN STEEL COMPANY, INC., OWEN SUPPLY COMPANY, INC., OWEN ELECTRIC STEEL COMPANY OF SOUTH CAROLINA, OWEN INDUSTRIAL PRODUCTS, INC., OWEN JOIST CORPORATION, OWEN MISCELLANEOUS METALS, INC. AND SOUTH CAROLINA STEEL CORPORATION,

Petitioners,

vs.

SOUTH CAROLINA TAX COMMISSION, JOHN T. WEEKS AS CHAIRMAN, CHARLES N. PLOWDEN AND S. HUNTER HOWARD, JR., AS COMMISSIONERS, AND CONSTITUTING THE SOUTH CAROLINA TAX COMMISSION; AND SOUTH CAROLINA TAX BOARD OF REVIEW, JOHN W. FOSTER, AS CHAIRMAN, ISADORE BOGOSLOW, MARGARET R. DIGGS, VANCE B. DRAWDY, PAUL HEMPHILL, JOHN C. B. SMITH AND RONNIE L. SMITH AS MEMBERS, AND CONSTITUTING THE SOUTH CAROLINA TAX BOARD OF REVIEW,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

T. TRAVIS MEDLOCK
JOE L. ALLEN, JR. *
RONALD W. URBAN
Post Office Box 125
Columbia, South Carolina 29214
PH. (803) 758-2211

*Principal Attorney

COUNSEL OF RECORD
FOR RESPONDENTS

---

38 pp

QUESTION PRESENTED

Does the Fourteenth Amendment to the Constitution of the United States proscribe the taxation of the Petitioners' property upon an assessment (valuation) equal to the property's fair market value for the 1981 tax year:

(a) When all property within six of the state's eight classes was taxed upon an assessment equal to the property's fair market value; and

(b) When property within the two other classes was taxed upon an assessment that was less than the property's fair market value; and

(c) When there was an ongoing reassessment (revaluation) program to value the property within these two classes at fair market value that was

completed and implemented the following year; and

(d) When the record clearly established that the ongoing reassessment program could not have been completed and implemented for the 1981 tax year; and

(e) When the South Carolina Supreme Court, the South Carolina Court of Common Pleas of the Fifth Judicial Circuit, the South Carolina Tax Board of Review and the South Carolina Tax Commission found that there was no intentional or invidious discrimination; and

(f) When the granting of the relief sought by the Petitioners would compound not cure the inequity?

TABLE OF CONTENTS

	Page
Question Presented.....	i
Table of Contents.....	iii
Table of Authorities.....	iv
Opinions Below.....	1
Jurisdiction.....	1
Constitutional Provisions and Statutes Involved.....	1
Statement of the Case.....	2
Argument Summary.....	6
Argument	
a. Jurisdiction.....	7
b. Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201....	21
c. The South Carolina Decision - Appendix A of the Petition.....	22
d. History.....	23
Conclusion.....	26
Certificate of Service.....	27
Appendix.....	1a

TABLE OF AUTHORITIES

Page

CASES:

Barnes v. Dale County Board of Equalization, 283 Ala. 437, 218 So.2d 150..... 13

Carkonen v. Williams, 76 Wash.2d 617, 458 P.2d 280 (1969)..... 15

Citizens Committee v. Warner, 127 Colo. 121, 254 P.2d 1005 (1953).. 15

Consolo v. Federal Maritime Commission, 383 U.S. 607, 620, 16 L.Ed.2d 131, 140, 86 S.Ct. 1018, 1026..... 9

Dore v. Kinnear, 79 Wash.2d 755, 489 P.2d 898 (1971)..... 15

Ellis v. Spartan Mills, 270 S.C. 216, 277 S.E.2d 590..... 9

Greene v. Louisville & Interurban R. Co., 244 U.S. 499, 37 S.Ct. 673, 61 L.Ed. 1280..... 18

Hamilton v. Adkins, 250 Ala. 557, 35 So.2d 183, cert. den., 335 U.S. 861, 93 L.Ed. 407, 69 S.Ct. 133.. 11

Hillock v. Bade, 22 Ariz.App. 46, 523 P.2d 97 (1974) approved 111 Ariz. 585, 535 P.2d 1302..... 13

Page

CASES CONTINUED:

Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304..... 8, 9

May Department Stores v. State Tax Commission, 308 S.W.2d 748 (1958 Mo.)..... 15

Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201.. 21

Rogan v. County Commissioners of Calvert County, 194 Md. 299, 71 A.2d 47..... 14

Schudel v. South Carolina Alcoholic Beverage Control Commission, 276 S.C. 138, 276 S.E.2d 308..... 8

Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340, 28 A.L.R. 979. 19

Skinner v. New Mexico Tax Commission, 66 N.M. 221, 345 P.2d 750, 76 A.L.R.2d 1071 (1959)..... 19

Sperry Corporation v. State Tax Commission, 695 S.W.2d 464, September, 1985..... 10

Sunday Lake Iron Co. v. Wakefield, 247 U.S. 350, 38 S.Ct. 495, 62 L.Ed. 1154..... 15

Constitution and Statutes:

	Page
28 U.S.C.A. 1257(3).....	1
Article X, § 1, South Carolina Constitution.....	2
South Carolina Code § 1-23-380...	2, 7, 1a
South Carolina Code § 12-37-90...	23
South Carolina Code § 12-39-150..	17
South Carolina Code § 12-43-210..	23
Act 208, Acts of 1975.....	23, 24

OPINIONS BELOW

The opinion of the South Carolina Supreme Court is set out as Appendix A in the Petition for the Writ of Certiorari. Nothing further is here added.

JURISDICTION

The jurisdiction of this Court is sought under 28 U.S.C.A. 1257(3). It, however, is respectfully submitted that jurisdiction should be declined and that the Writ of Certiorari not granted in that there is no special or important reason to grant the same.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

In addition to the statutory provisions set forth in the Petition, the following is here added as:

Appendix, § 1-23-380, Code of Laws of South Carolina, 1976.

STATEMENT OF THE CASE

Under the provisions of Article X, § 1 of the Constitution of South Carolina, property is divided into eight classes for ad valorem tax purposes. Property in six of the eight classes is directly or by rule or regulation valued by the South Carolina Tax Commission. Property in the other two classes (real property used for residential purposes and real property not otherwise included in another class) is valued by the County Tax Assessor.

The Petitioners own and operate manufacturing establishments in Greenville, Lexington and Richland Counties of South Carolina. The

majority of the taxable property in each of the three counties was assessed directly or by rule or regulation of the South Carolina Tax Commission at the property's approximate fair market value.

The other property was assessed by the County Tax Assessor at less than the property's fair market value. A ratio study made by the South Carolina Tax Commission reflected the median ratios of the property assessed by the County Tax Assessor for the 1981 tax year to be 40.8% for Greenville County, 69.2% for Lexington County and 45% for Richland County. The ratio study did not include any property valued directly or by rule or regulation of the South Carolina Tax

Commission. A ratio study is the comparison of appraisals of lots or parcels in a given county to recent or current sales of those lots or parcels. The median is obviously the middle figure or ratio determined by the lots or parcels sold.[1] The Petitioners sought to require the reduction in the assessment of their property at fair market value by the average or median ratio of the property assessed by the County Tax Assessors. After a full and complete hearing, the South Carolina Tax Commission denied the reduction. Such was sustained by the South Carolina Tax

---

[1] If there are insufficient sales or no appraisals, the study, though less accurate, can be made by individual appraisals compared to assessed or tax values.

Board of Review, an independent review body, the Court of Common Pleas of the Fifth Judicial Circuit and by the South Carolina Supreme Court.

The record establishes that each county was putting forth a maximum effort in personnel and funds to complete a reassessment program. Each, however, could not complete and implement the same prior to the 1982 tax year.[2]

---

[2]The Assessor of Richland County stated that:

> "If the county council had appropriated $10 Million, if county council had given us 250 more people, we couldn't have moved any faster than we did." Tr., p. 147.

Similar but less dramatic statements were made by the Assessors of Lexington and Greenville Counties. The holding was that under such facts, there was no intentional or invidious discrimination. Appendix A, p. 7a of the Petition.

ARGUMENT SUMMARY

The Fourteenth Amendment is not abridged under the facts here involved by the taxation of the Petitioners' property, and the property in six of the state's eight classes, upon an assessment equal to fair market value when property in the two other classes was taxed for the 1981 tax year upon an assessment that was less than fair market value. There was in place an ongoing revaluation program to remedy the inequity and tax the property in the two classes upon an assessment equal to fair market value. It was not possible to complete and implement the program prior to 1982. All property was then taxed upon assessments that reasonably represented the property's true value.

ARGUMENT

IN OPPOSITION TO THE WRIT OF CERTIORARI

a. Jurisdiction

The Petitioners seek the Writ for this Court to review a decision of the Supreme Court of South Carolina that was rendered under the state's Administrative Procedures Act, § 1-23-380. (Appendix, p. 1a)[3]

It is significant to note that the South Carolina Tax Commission, the agency that made the assessment in the first instance, and the South Carolina Tax Board of Review, an independent agency that reviews the Tax Commission's findings, factually found that there was no intentional or invidious

---

[3]The court's jurisdiction under this statute is also set forth in the Order of the South Carolina Supreme Court, pp. 3a and b of Appendix A of the Petition.

discrimination involved. The Court of Common Pleas and the South Carolina Supreme Court held the findings to be supported by reliable, probative and substantial evidence.[4]

Under the South Carolina Administrative Procedures Act, the court will not "substitute its judgment for that of the agency as to the weight of evidence on questions of fact". Section 1-23-380. See also Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304; Schudel v. South Carolina Alcoholic Beverage Control Com., 276 S.C. 138, 276 S.E.2d

---

[4]The court further held that, "The Commission therefore found, which is again supported by the record, that to grant petitioners' request would not equalize the assessments, but might further compound any inequity which might exist. Petitioners would, if their request were granted, pay a disproportionate lesser tax than all others in their same class." Appendix A, p. 8a of the Petition.

308; Ellis v. Spartan Mills, 270 S.C. 216, 277 S.E.2d 590. The court applies the substantial evidence rule. In Lark v. Bi-Lo, Inc., supra, the South Carolina Supreme Court favorably quotes from Consolo v. Federal Maritime Commission, 383 U.S. 607, 620, 16 L.Ed.2d 131, 140, 86 S.Ct. 1018, 1026, as follows:

> "We have defined 'substantial evidence' as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' ... 'It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury ...' This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence."

It was under this standard that the

matter was reviewed by the South Carolina courts. In support thereof, it is respectfully submitted that under the facts here involved there was no infringement upon the Petitioners' constitutionally protected rights. There was no intentional, systematic, habitual, fraudulent or invidious discrimination.

It is true that the Petitioners' property was taxed upon an assessment equal to the property's fair market value, while property in two other classes was taxed upon an assessment less than fair market value. However, that standing alone is insufficient to trigger the Fourteenth Amendment. Similar issues have been reviewed by the courts of other states. In Sperry

Corporation v. State Tax Commission, 695 S.W.2d 464, September, 1985, owners of personal property sought the reduction in the assessment of their property because real property was being taxed at a lesser percentage of value. The Supreme Court of Missouri, En Banc, denied the relief holding that there was no denial of equal protection under the Fourteenth Amendment. It is significant to note that a revaluation of the real property was ongoing and was implemented the following year.

In Alabama, a county was divided into four districts. The property within each district was reassessed on a four year cycle. It was contended that this method of assessment was unconstitutional. The Alabama Supreme Court in Hamilton v. Adkins, 250 Ala.

557, 35 So.2d 183, cert. den., 335 U.S. 861, 93 L.Ed. 407, 69 S.Ct. 133, held as follows:

> "How can there be a design or intention to discriminate when the board of equalization in all of its working time does all that it can humanly do? We think the record shows that it takes four years to review and reappraise all of the taxable units in Jefferson County. How can there be a design or intention to discriminate just because the review and reappraisal are not done in less time than men are physically able to do the job? Assuming for the sake of argument that there is the vice of discrimination in the four year plan, it's a fair question to ask how the vice can be removed? When the four year plan was completed in 1945, the board of equalization might have refused to make further reviews and appraisals. This obviously would make a mockery of the function of the board of equalization. More employees might be hired in order to make the equalization in one year. This is not a matter with which the board of equalization can be charged.

> It employed all the help allowed by law. Under the circumstances the four year plan was born of necessity and at the worst contemplates complete equalization at the end of four years. Any inequality is merely tempo ary. As we shall see when the review is merely partial, temporary and made in good faith, this tends to show lack of intention to discriminate." (See also Barnes v. Dale County Board of Equalization, 283 Ala. 437, 218 So.2d 150, where residential property was reassessed and other properties reassessed in subsequent years was held to be nondiscriminatory.)

Temporary differences in value caused by a cyclical three year valuation plan were held to be nondiscriminatory in Hillock v. Bade, 22 Ariz.App. 46, 523 P.2d 97 (1974), approved, 111 Ariz. 585, 535 P.2d 1302. There the state valued all but three classes of property, residential, agricultural and general commercial

properties, at or near market value. The three classes not valued by the state were valued by the local tax assessor. The local assessor adopted a plan to revalue these three classes over a three year period. The revaluation was according to parcel number, the lowest numbered parcel being revalued first.

In Rogan v. County Commissioners of Calvert County, 194 Md. 299, 71 A.2d 47, the Court of Appeals sustained the assessment of property by districts. The court in part held that:

> "It is not an infringement of the equal protection clause of the Fourteenth Amendment for a statute to authorize the assessment of the same classes of property in different districts in different years, or the assessment of different classes of property in different years."

An annotation regarding this issue

is found in 76 A.L.R.2d 1077. See also May Department Stores v. State Tax Commission, 308 S.W.2d 748 (1958 Mo.); Citizens Committee v. Warner, 127 Colo. 121, 254 P.2d 1005 (1953); Carkonen v. Williams, 76 Wash.2d 617, 458 P.2d 280 (1969) and Dore v. Kinnear, 79 Wash.2d 755, 489 P.2d 898 (1971).

The above clearly reflects that the issue here presented is not novel to South Carolina. A compelling governmental need for a reasonable time in which to correct the matter is evident. The issue involves the 1981 tax year and the inequity was cured the following year.

The decisions of this Honorable Court on somewhat related issues support the decision of the South Carolina Supreme Court. In Sunday Lake Iron Co.

v. Wakefield, 247 U.S. 350, 38 S.Ct. 495, 62 L.Ed. 1154, it was held that:

> "The record discloses facts which render it more than probable that plaintiff in error's mines were assessed for the year 1911 (but not before or afterwards) relatively higher than other lands within the county although the statute enjoined the same rule for all. But we are unable to conclude that the evidence suffices clearly to establish that the state board entertained or is chargeable with any purpose or design to discriminate. Its action is not incompatible with an honest effort in new and difficult circumstances to adopt valuations not relatively unjust or unequal. When plaintiff in error first challenged the values placed upon the property of others no adequate time remained for detailed consideration nor was there sufficient evidence before the board to justify immediate and general revaluations. The very next year a diligent and, so far as appears, successful effort was made to rectify any inequality. The judgment of the court below must be
>
> Affirmed."

Here the record establishes that a reduction in the assessment of property in the six classes to the medium level of the other two classes would have catastrophic effect upon the counties (including schools and other taxing entities). At the time the matter was heard, most tax notices had been mailed or otherwise finalized. Section 12-39-150 provides that the tax duplicate is furnished by the county auditor to the county treasurer "on or before the thirtieth day of September[5] annually as his warrant for the collection of taxes, assessments and penalties charged thereon". The matter herein was heard by the South Carolina

---

[5]Each year some counties obtain extensions of this date because the records cannot be completed by that date.

Tax Commission and its decision issued November 16, 1981. At that time, it was impossible to equalize the values for the 1981 tax year. Because, however, some property within the two classes was valued above and some below the medium, equalization would have compounded not cured the inequity.

Greene v. Louisville & Interurban R. Co., 244 U.S. 499, 37 S.Ct. 673, 61 L.Ed. 1280, is likewise not here applicable. In that case, the assessment of one class at a higher proportion of value than another class was intentional and fraudulent. There was no ongoing program to correct the situation in the next ensuing year. Here, it cannot be said that the actions of the county assessor were fraudulent. Every effort possible was being made to

tax the property of all classes at fair market value.

In Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340, 28 A.L.R. 979, the court held as follows:

> "This court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standard of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. * * *."

The Supreme Court of New Mexico in Skinner v. New Mexico Tax Commission, 66

N.M. 221, 345 P.2d 750, 76 A.L.R.2d 1071 (1959), commented on these cases as follows:

> "This is not a case where one or a few taxpayers are arbitrarily assessed at a higher level than others, as in Sioux City Bridge Co. v. Dakota County, Neb., 1923, 260 US 441, 43 S Ct 190, 67 L ed 340, 28 ALR 979; nor where a single industry is discriminated against, as in Greene v. Louisville & Interurban R. Co. 1917, 244 US 499, 37 S Ct 673, 61 L ed 1280, Ann Cas 1917E 88. It is more analogous to the situation in Sunday Lake Iron Co. v. Township of Wakefield, 1918, 247 US 350, 38 S Ct 495, 62 L ed 1154, where a reappraisal program was commenced but in one year re-assessment was completed on mining properties only. There, the Supreme Court of the United States refused to interfere and allowed the assessment to stand, even though there was an obvious but temporary inequality."

It is thus respectfully submitted that this Honorable Court should decline

jurisdiction and deny the Writ of Certiorari.

b. Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201

The jurisdiction of the Supreme Court of the United States to determine if there has been a denial of the protection afforded by the Fourteenth Amendment is not controverted. It, however, is respectfully submitted that the court should decline jurisdiction and deny the Writ of Certiorari.

Rule 17 of this Court provides the guide for the review. Subsection 1(c) provides in part that the Writ may be granted:

> "When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court."

The issue here is whether there are sufficient facts in the record to support the findings and holdings that there was no intentional or invidious discrimination. Two agencies and two of the courts including the highest of the state held that there was none.

c. The South Carolina Decision - Appendix A of the Petition

The Petitioners would lead this Court to the believe that the South Carolina Supreme Court has issued an opinion in conflict with prior opinions. The South Carolina Court did not hold that property was not to be equally and uniformly assessed within the respected classes. It did not hold that property was to be taxed upon a value other than the property's actual or market value. All the court held was that under the facts and circumstances in this case,

there was no intentional or invidious discrimination.

d. History

In 1975, by Act 208, Acts of 1975, the General Assembly required each of the state's forty-six counties to employ a property tax assessor.[6] The Act also required that property be uniformly and equitably assessed throughout the state.[7] The South Carolina Tax Commission was given the responsibility to insure the equalization.[8] However, because of fiscal and personnel restraints, this could not be

---

[6]Section 12-37-90 of the South Carolina Code of Laws, 1976.

[7]Section 12-43-210 of the South Carolina Code of Laws, 1976.

[8]Section 12-43-210 of the South Carolina Code of Laws, 1976.

accomplished before 1982. As the record reflects, there was not an adequate pool of trained appraisers to draw from. This necessitated time delays in order to train and bring the appraisers to a satisfactory standard.[9]

The funding levels for the reassessment within the three counties required substantial appropriations by the counties. The record reflects that each of the three counties provided this

---

[9]"Mr. Allen: Mr. Crider, is there available an unlimited supply of trained appraisers?

Mr. Crider: No, sir. At the time that Act 208 passed, practically every county in the state was buying from the same expertise. The county was unable to find qualified personnel, which necessitated them employing people and training them in the respective areas that they needed expertise in. So it was a very difficult thing to find qualified personnel." Tr., p. 093.

funding.[10] It is thus evident that the time between 1975 and 1982 was necessary to the governmental purpose of obtaining uniformity and equality in taxation. The Fourteenth Amendment is to be applied in a real world. It is not to be taken in isolation and applied arbitrarily. It cures not compounds inequality.

---

[10]Transcript, p. 091 for Greenville County; p. 136 for Lexington County and p. 145 for Richland County.

CONCLUSION

It is respectfully submitted that this Honorable Court should decline jurisdiction and deny the Writ.

Respectfully submitted,

T. TRAVIS MEDLOCK
Attorney General of S. C.

Joe L. Allen, Jr.
Chief Deputy Attorney General

Ronald W. Urban
Assistant Attorney General
Attorneys for Respondents

Columbia, South Carolina

March 25, 1986

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of March, 1986, three copies of a Brief In Opposition To Petition For Writ Of Certiorari were mailed by depositing same in the United States Post Office at Columbia, South Carolina, with first class postage prepaid, addressed to Terrell L. Glenn, Esq., Theodore J. Hopkins, Jr., Esq., Robert E. Stepp, Esq., McNair, Glenn, Konduros, Corley, Singletary Porter & Dibble, P.A., Post Office Box 11390, Columbia, South Carolina 29211.

Joe L. Allen, Jr.
Chief Deputy Attorney General
P.O. Box 125
Columbia, S.C. 29214

Attorney for Respondents

APPENDIX

§1-23-380. Judicial review upon exhaustion of administrative remedies.

(a) A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) Proceedings for review are instituted by filing a petition in the circuit court within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision thereon. Copies of the petition shall be served upon the agency and all parties of record.

(c) The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

(d) Within thirty days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party

unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(f) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences,

conclusions or decisions are:

(1) In violation of constitutional or statutory provisions;
(2) In excess of the statutory authority of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Supreme Court, U.S.
FILED
APR 4 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1484

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

OWEN STEEL COMPANY, INC., OWEN SUPPLY COMPANY, INC., OWEN ELECTRIC STEEL COMPANY OF SOUTH CAROLINA, OWEN INDUSTRIAL PRODUCTS, INC., OWEN JOIST CORPORATION, OWEN MISCELLANEOUS METALS, INC. AND SOUTH CAROLINA STEEL CORPORATION,

Petitioners,

vs.

SOUTH CAROLINA TAX COMMISSION, JOHN T. WEEKS AS CHAIRMAN, CHARLES N. PLOWDEN AND S. HUNTER HOWARD, JR., AS COMMISSIONERS, AND CONSTITUTING THE SOUTH CAROLINA TAX COMMISSION; AND SOUTH CAROLINA TAX BOARD OF REVIEW, JOHN W. FOSTER, AS CHAIRMAN, ISADORE BOGOSLOW, MARGARET R. DIGGS, VANCE B. DRAWDY, PAUL HEMPHILL, JOHN C. B. SMITH AND RONNIE L. SMITH AS MEMBERS, AND CONSTITUTING THE SOUTH CAROLINA TAX BOARD OF REVIEW,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of South Carolina

REPLY BRIEF OF PETITIONERS

TERRELL L. GLENN
*THEODORE J. HOPKINS, JR.
ROBERT E. STEPP
MCNAIR GLENN KONDUROS CORLEY
SINGLETARY PORTER & DIBBLE, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Counsel of Record

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
REPLY	1
CONCLUSION	7

TABLE OF AUTHORITIES

CASES: Page

Crow v. McAlpine, 277 S.C. 240, 285 S.E.2d 355 (1981). 7

Louisville & Nashville Railway v. Public Service Commission of Tennessee, 493 F.Supp. 162 (M.D. Tenn. 1978), *aff'd* 631 F.2d 426 (6th Cir. 1980), *cert. den.*, 450 U.S. 659, 101 S.Ct. 1418 (1981). 8

McLennan v. Undercofler, 222 Ga. 302, 149 S.E.2d 705 (1966). 5

Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983). 7

Perkins v. County of Albemarle, 214 Va. 240, 198 S.E.2d 626 (1973). 5

Raymond v. Chicago Union Traction Co., 207 U.S. 20, 28 S.Ct. 7, 52 L.Ed.78 (1907). 4, 7

Sioux City Bridge Co. v. Dakota County, Nebraska, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed.340 (1923). 2, 3, 4, 8

Sunday Lake Iron Co. v. Wakefield, 247 U.S. 350, 38 S.Ct. 495, 62 L.Ed. 1154 (1918). 3, 4, 8

Undercofler v. Seaboard Air Line Railroad Co., 222 Ga. 822, 152 S.E.2d 878 (1966). 5

CONSTITUTIONAL PROVISIONS:

South Carolina Constitution of 1868
Article IX, Section 1 6

STATUTES AND REGULATIONS:

Statutes at Large of South Carolina
Act 208 of 1975, Jt. Res. 248 6

South Carolina Property Tax Regulation
117-115 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-1484

OWEN STEEL COMPANY, INC., OWEN SUPPLY COMPANY, INC., OWEN ELECTRIC STEEL COMPANY OF SOUTH CAROLINA, OWEN INDUSTRIAL PRODUCTS, INC., OWEN JOIST CORPORATION, OWEN MISCELLANEOUS METALS, INC. AND SOUTH CAROLINA STEEL CORPORATION,

Petitioners,

VS.

SOUTH CAROLINA TAX COMMISSION, JOHN T. WEEKS AS CHAIRMAN, CHARLES N. PLOWDEN AND S. HUNTER HOWARD, JR., AS COMMISSIONERS, AND CONSTITUTING THE SOUTH CAROLINA TAX COMMISSION; AND SOUTH CAROLINA TAX BOARD OF REVIEW, JOHN W. FOSTER, AS CHAIRMAN, ISADORE BOGOSLOW, MARGARET R. DIGGS, VANCE B. DRAWDY, PAUL HEMPHILL, JOHN C. B. SMITH AND RONNIE L. SMITH AS MEMBERS, AND CONSTITUTING THE SOUTH CAROLINA TAX BOARD OF REVIEW,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of South Carolina

---

REPLY BRIEF OF PETITIONERS

Pursuant to Rule 22.5 of the Rules of this Court, Petitioners submit the following reply to the brief filed by the Respondents.

Respondent's Brief Concedes The Question Of Jurisdiction And Simply Reargues The Merits Of The Case

Respondents concede the critical jurisdictional issue before the Court. Their brief is essentially no more than an appellate brief that reargues the merits of the case and disregards a host of decisions of this Court addressing the principles and precepts that govern the exercise of jurisdiction to review the final judgment of a state's highest court.[1] Respondents' neglect of this Court's opinions as to the question of jurisdiction is reminiscent of the South Carolina Supreme Court's cavalier treatment of the Court's decision in *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923). Petition for Writ of Certiorari, at 14 n.8. Indeed, it is this attitude of disregard or casual concern for the opinions of this Court that compels Petitioners to seek to vindicate their 14th Amendment rights herein.

Respondents' brief effectively confirms that the state court decision rests primarily on federal law, is interwoven with federal law and is not supported by adequate and independent state law grounds. Jurisdiction, therefore, is conceded by Respondents, and their brief merely restates the question of whether there was intentional discrimination, concluding that "[t]wo agencies and two of the courts including the highest of the state held that there was none." Respondents' Brief in Opposition, at 22. Instead of explaining why the "two agencies and two courts"

---

[1] *See*, e.g., cases cited in Petition for Writ of Certiorari, at 10 n.6.

do not cite a single state case to support their decisions, Respondents (1) repeat their position as to the question of intentional and systematic discrimination, (2) reargue the merits of cyclical revaluation programs and (3) restate the alleged "catastrophic effect" of remedying "the inequity." Although inappropriate to the question of jurisdiction, Petitioners feel compelled to reply.

(1) Intentional And Systematic Discrimination

Respondents' brief repeatedly emphasizes the principal issue that was before the two agencies and two lower courts, to wit: whether there was intentional and systematic discrimination in contravention of the 14th Amendment. Respondents' Brief in Opposition, at 7, 10, 18, 22 and 23. This Court has left no doubt that the terms "systematic and intentional" are key terms in determining whether there has been contravention of 14th Amendment rights. The following quote from *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923) clearly recognizes this:

> In the case of Sunday Lake Iron Co. v. Wakefield Twp. 247 U.S. 350, 352, 353, 62 L.ed. 1154-1156, 38 Sup. Ct. Rep. 495, this court said:
>
> "The purpose of the equal protection clause of the 14th Amendment is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that *intentional, systematic*

> *undervaluation* by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. Raymond v. Chicago Union Traction Co. 207 U.S. 20, 35, 37, 52 L.ed. 78, 87, 88, 28 Sup. Ct. Rep. 7, 12 Ann. Cas. 757."

Id., 260 U.S. at 445, 43 S.Ct. at 191, 67 L.Ed. at 342 (1923). (Emphasis supplied.)

The repeated use of "systematic and intentional" as 14th Amendment terms of analysis and the state court's exclusive reliance upon federal case law analysis in addressing the 14th Amendment question leads to the conclusion that the Supreme Court of South Carolina decided this case solely on federal grounds. Accordingly, and in view of the fact that its decision is directly in conflict with the abovequoted settled law affirmed by this Court in *Chicago Union Traction, Sunday Lake* and *Sioux City Bridge*, the Court should accept jurisdiction of this case.[2]

(2) Cyclical Revaluation Programs Are Not Relevant To The Issue Herein

Respondents rely heavily on decisions of other state courts holding that there is no denial of equal protection where the assessing authority is in the midst

---

[2] Bear in mind that, notwithstanding the decision of the state court, the record is replete with evidence as to the *admittedly* long-standing, systematic and intentional actions of both the Tax Commission and the county assessors that resulted in the gross disparity and discrimination herein. Petition for Writ of Certiorari, at 4-6, 23a, 24a.

of a cyclical revaluation program.[3] Those cases, however, are not relevant in view of the fact that the case herein does not address an ongoing, cyclical revaluation program. Here the issue involves equalization and appraisal of all property in the taxing districts (counties) for the first time in *sixty-seven* years.[4] In effect, the state court holding is that at least sixty-six years can elapse and result in such gross disparity that virtually half of the total assessed value of the taxing district (county) is appraised at less than forty (40%) percent of fair market value, and such does not constitute a violation of 14th Amendment rights, as long as equalization occurs "the next year". Therefore, in reality, the state court has adopted the principle that sixty-six years of systematic and intentional gross disparity of appraisals is permissible as long as equalization is finally accomplished "the next year." This is totally unreasonable and repugnant to the 14th Amendment rights of those citizens whose property is repeatedly appraised at full fair market value while property of others, aggregating hundreds of millions of dollars, is consistently appraised grossly below the minimum standard required by law. Obviously, cases addressing three, four and six year cyclical revaluation programs are clearly not applicable to the circumstances herein.[5]

---

[3] *See*, Petition for Writ of Certiorari, at 30a, for cases holding otherwise. Petitioners invite the Court's particular attention to *Perkins v. County of Albemarle*, 214 Va. 240, 198 S.E.2d 626 (1973), *McLennan v. Undercofler*, 222 Ga. 302, 149 S.E.2d 705 (1966), and *Undercofler v. Seaboard Air Line Railroad Co.*, 222 Ga. 822, 152 S.E.2d 878 (1966) for decisions granting taxpayers the relief contended under the 14th Amendment, notwithstanding ongoing state-wide or county-wide revaluation programs.

[4] *See*, Petition for Writ of Certiorari, at 5, 6 n.2.

[5] Respondents state that the 14th Amendment should be ap-

(3) Alleged "Catastrophic Effect" Of Remedying The Inequity Is Easily Avoidable

Respondents allege that remedying "the inequity" would have "catastrophic effect upon the counties." Respondents' Brief in Opposition, at 6, 17. Petitioners have responded to this allegation throughout the course of the litigation below and, in like manner, they submit for this Court's consideration the fairly recent property tax decision by the Supreme Court of South Carolina in favor of a taxpayer, a decision which includes a classic method of providing relief to the taxpayer without causing disruption of county operations.

> . . . [W]e are cognizant of the disruptive effect today's decision could have on the financial operation of the school system. We hold that today's decision shall be applied prospectively beginning with the next tax year, with one exception. Appellant Hinson

---

plied in a "real world." Respondents' Brief in Opposition, at 25. Respondents' "History" suggests that the requirement of uniformity and equality of valuation arose for the first time in 1975 with the adoption of Act 208 of 1975, Jt. Res. 248. Respondents' Brief in Opposition, at 23-25. That legislation, however, and South Carolina Property Tax Regulation 117-115 promulgated thereunder, do no more than recognize the constitutional requirement of equality and uniformity which has been in effect in South Carolina for over one hundred (100) years. S.C. Const. Art. IX, §1 (1868). Indeed, the constitutional requirement of equality and uniformity was adopted forty-seven (47) years *before* the Tax Commission was organized in 1915, admittedly, for the purpose of equalizing property. Petition for Writ of Certiorari, at 6 n.2. Thus, the equalization that was finally accomplished for the first time in 1982 ("the next year"), occurred *one hundred fourteen* years after the standard of equality and uniformity was established in 1868. Although this may be Respondents' idea of a "real world," such can hardly be described as an ongoing, three, four or six year cyclical revaluation program.

> is entitled to a refund of the property taxes which he paid under protest.

Crow, et al. v. McAlpine, et al., 277 S.C. 240, 245, 285 S.E.2d 355, 358 (1981).

There is no reason why the above-described method of granting relief could not have been applied by the court below, thereby eliminating the possibility of any alleged "catastrophic effect" occurring.

CONCLUSION

In the 1983 case of *Michigan v. Long*, 463 U.S. 1032, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983), this Court held:

> . . . [I]t cannot be doubted that there is an important need for uniformity in federal law, and that this need goes unsatisfied when we fail to review an opinion that rests primarily upon federal grounds and where the *independence* of an alleged state ground is not apparent from the four corners of the opinion.

Id., 463 U.S. at 1040, 103 S.Ct. at 3475, 77 L.Ed.2d at 1214. (Emphasis in the original.)

A thorough review of the opinion of the Supreme Court of South Carolina and the Respondents' brief leads one to the inescapable conclusion that it is a decision which rests primarily, if not exclusively, upon federal grounds.

In view of the principles and precepts established in *Michigan v. Long, supra*; in view of the abundant evidence establishing long-standing, admittedly systematic and intentional disparity of appraisals; in view of the conflict of the lower court's decision with that of settled law affirmed by this Court in *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20, 28 S.Ct.

7, 52 L.Ed.78 (1907), *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 38 S.Ct. 495, 62 L.Ed. 1154 (1918), and *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340 (1923); in view of the clear conflict of the lower court's decision with that of the Court of Appeals for the Sixth Circuit in *Louisville & Nashville Railway v. Public Service Commission of Tennessee*, 433 F.Supp. 162 (M.D. Tenn. 1978), *aff'd*, 631 F.2d 426 (6th Cir. 1980), *cert. den.*, 450 U.S. 959, 101 S.Ct. 1418 (1981); and in view of the conflict of the lower court's decision with prior decisions of the Supreme Court of South Carolina and with a host of decisions of other state courts of last resort, there is special and important reason for this Court to grant the Petition for Writ of Certiorari and to review the decision of the Supreme Court of South Carolina.

Respectfully submitted,

TERRELL L. GLENN
THEODORE J. HOPKINS, JR.
ROBERT E. STEPP
McNAIR GLENN KONDUROS CORLEY SINGLETARY PORTER & DIBBLE, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Attorneys for Petitioners

April 4, 1986